

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>TERA A. McMILLAN,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Case No: 2:07:CV-01-WKW</b>
	)	
<b>vs.</b>	)	
	)	
<b>ALABAMA DEPARTMENT OF</b>	)	
<b>YOUTH SERVICES and</b>	)	
<b>MICHAEL J. HARDY,</b>	)	
	)	
<b>Defendants.</b>	)	

**DEFENDANT ALABAMA DEPARTMENT OF YOUTH SERVICES' REPLY TO  
PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT ALABAMA DEPARTMENT  
OF YOUTH SERVICES' MOTION FOR SUMMARY JUDGMENT**

COMES NOW THE DEFENDANT DEPARTMENT OF YOUTH SERVICES (DYS,) by and through the undersigned counsel, and submits the following brief to reply to the plaintiff's brief in opposition to DYS' motion for summary judgment.

**I. REPLY TO DEFENDANT'S STATEMENT OF FACTS**

**A. Introduction.**

The plaintiff indicated in their brief that there are material and substantial disputed matters of fact in the instant case and the motion is due to be denied. In response, DYS believes that there are no material and substantial disputed matters of fact to be presented to a jury.

**B. Statement of Undisputed Facts**

2. Ms. McMillan works at the Mt. Meigs campus, which is the most secure facility in the DYS system and is staffed with older, more ungovernable male juvenile delinquents.

Plaintiff's Response: The plaintiff admitted that she works at Mt. Meigs. The remaining statements are not supported by any evidence in the record; are not relevant or material, and are due to be stricken in accordance with Section 2 of the Court's Rule 16 Scheduling Order (Doc. 15) and paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: ITU (Intensive Treatment Unit) is a self-contained unit at Mt. Meigs with heavy locks, tight security, and a control room. (McMILLAN Dep. P. 54, line 15 - 55 p. 11).

4. DYS maintains an anti-discrimination policy that prohibits sexual harassment.

Plaintiff's Response: The Plaintiff admits that DYS has such a written policy, but disputes that the defendant has produced or established any evidence that the written policy is implemented with adequate training or is effective.

DYS' REPLY: The Plaintiff admitted in her brief that DYS has an anti-discrimination policy but she denied that it is "implemented with adequate training or that it is effective." (Doc. 44, Plaintiff's Brief in Opposition, p. 2-3). That "denial" is unsupported by facts and is ineffective as discussed in the following paragraphs.

Ms. McMillian testified in her deposition to all the facts that establish the affirmative defense. She became familiar with the DYS policy during her first year of employment, she had the actual policy in her possession, she was trained on the policy beginning during her first year and continued to be trained thereafter, she was familiar with that policy and received training during the entire time Michael Hardy allegedly harassed her, she understood that she should have reported the alleged harassment to the DYS Personnel Director pursuant to the policy, but she nevertheless chose NOT to avail herself of the policy. (McMILLAN dep. P. 136 line 17 - 166 line 1). The Plaintiff furthermore concedes that at the time she made the report, she still had no

intention of making it—rather, she spoke with Hardy’s supervisor with the intention to ask for a transfer to a different dorm. (Citations below).

Furthermore, it is not in dispute that on the day the Plaintiff was required to report the alleged harassment to DYS Personnel<sup>1</sup>, she was immediately separated from Hardy so that further harassment was not possible. (McMillan dep. P. 170, line 7 - 171 line 5). It is difficult to conceive of a factual scenario testified to **by the Plaintiff** to prove a more thoroughly distributed policy, better trained employees, or a more effective policy than the policy in issue in this case. The Plaintiff’s denial is without factual support.

Stated more thoroughly, the facts in this case testified to by the Plaintiff do not raise an inference that the DYS anti-discrimination policy is ineffective. It is incontrovertible that the policy was effective. The facts are that Ms. McMillan made the Department aware of her complaint on or about May June 14, 2005. (Spann Depo. P. 41, lines 6-13). On that date she spoke to Hardy’s supervisor, Phyllis Rankins. McMillan concedes that she did not see Ms. Rankins for the purpose of complaining about sexual harassment. (McMillan dep. P. 132 line 3 - 9). However, Ms. Rankins questioned Ms. McMillan regarding her motivation for seeking a transfer. When McMillan told Rankins that Hardy had sexually harassed her, Rankins immediately put the Department’s anti-discrimination policy into action (McMillan dep. P. 132 line 19 - 23), by doing two things: First, she instructed McMillan to go to Personnel and report the alleged discrimination, (McMillan dep. P. 13 lines 1-4). Second, she immediately gave Ms. McMillan the reassignment she sought to separate McMillan from Hardy. (McMillan dep. P. 134

---

<sup>1</sup> McMILLAN first reported the alleged harassment on June 14, 2005. (Spann Depo. P. P. 41, lines 1-14).

lines 4 - 14). McMillan concedes that Rankins did exactly what she was supposed to do under the DYS policy. The Plaintiff further concedes that from that point forward, Hardy was not able to sexually harass her on the job. (McMillan Depo. p. 170 line 7 - p. 171 line 4).

The Plaintiff must do more than just deny that the Department's policy is effective. The Plaintiff must present evidence to rebut the Defendant's evidence of an effective policy. She has failed to do that. As a result, the Department is entitled to the affirmative defense under *Faragher/Ellerth*. If the employee can avoid the defense simply by denying that the policy was "effective" under the facts of this case, then the defense is meaningless.

5. Ms. McMillan does not dispute that she was at all times relevant to this case aware of the policy and the reporting procedures.

Plaintiff's Response: The plaintiff disputes that any admissible evidence has been presented that she was aware of the policy and reporting procedures "at all times relevant to this case."

DYS' REPLY: The plaintiff was aware of the policy and the reporting procedures as the Plaintiff testified during a Deposition on January 22, 2008 (Exhibit 1 pg 163 line 16 - page 165 line 7).

163

16 Q Let's turn quickly to a different subject.  
 17 You are familiar with the DYS policy on sexual  
 18 harassment, aren't you?  
 19 A Yes.  
 20 Q You are?  
 21 A Yes.  
 22 Q You were trained on that policy early in your  
 23 employment, weren't you?

164

- 1 A In the first year of my employment, yes.  
2 Q And throughout the time that Michael Hardy was  
3 interacting with you in a sexually inappropriate way,  
4 you were familiar with that policy?  
5 A Yes.  
6 Q And you knew that the policy said that you  
7 should go and complain to personnel?  
8 A Yes.  
9 Q You had a copy of that policy with you?  
10 A With me?  
11 Q Yes. At that time, didn't you?  
12 A Where?  
13 Q You had in your possession during that period  
14 of time that policy?  
15 A They have a policy book in the dorm.  
16 Q And you actually physically went through that  
17 policy and you had actually physically been over that  
18 policy yourself in the dorm?  
19 A Yes, sir, when I was in Holloway Hall, I did.  
20 Q And, again, you had had training on more than  
21 one occasion, actually, on that policy?  
22 A Yes.  
23 Q And there was no doubt in your mind, was

165

- 1 there, that your procedure would be to go and complain  
2 about that to Debra Spann?  
3 A Sir, I didn't want to start any problems.  
4 Q I didn't ask you that. There was not any  
5 doubt in your mind what the policy was and what you were  
6 to do?  
7 A Yes. I knew what the policy was.

In the face of her own testimony, the Plaintiff's denial is ineffective.

7. In addition, all new DYS employees are given 40 hours in service training before they are assigned to the dorms.

Plaintiff's Response: The plaintiff disputes that there is any evidence in this case to

support this statement by the defendant, and it is due to be stricken in accordance with Section 2 of the Court's Rule 16 Scheduling Order (Doc. 15) and paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Please see also DYS' Policy and Procedures Number 4.2 Training for New Employees which indicates that all new employees shall receive 40 hours of training. (Exhibit 2). In addition, the Plaintiff testified about the continuing training requirements as follows:

10 Q You are aware and you have been aware, it has  
11 always been the policy, that it is required, to continue  
12 to work here, if you want to keep your job, you have to  
13 get that mandatory training every year? You know that?  
14 A Yes, sir.  
15 Q That is a requirement for you to keep your  
16 job?  
17 A Yes, sir.

(McMillan dep. P. 145 lines 10 - 17).

8. Included within that training is the DYS anti-harassment policy and procedures.

Plaintiff's Response: The plaintiff disputes that there is any evidence in this case to support this statement by the defendant, and it is due to be stricken in accordance with Section 2 of the Court's Rule 16 Scheduling Order (Doc. 15) and paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Debra Spann the Personnel Director for DYS indicated in a deposition that the policy is discussed in mandatory training of DYS employees. Please see Debra Spann's deposition (Exhibit 3 pg. 28 line 19 - pg. 29 line 23). Moreover, the Plaintiff conceded that she was trained on the policy and knew that she was required by the policy to report it to Ms. Spann:

p. 163

17 You are familiar with the DYS policy on sexual  
18 harassment, aren't you?

19 A Yes.

20 Q You are?

21 A Yes.

22 Q You were trained on that policy early in your  
23 employment, weren't you?

P. 164

1 A In the first year of my employment, yes.

2 Q And throughout the time that Michael Hardy was  
3 interacting with you in a sexually inappropriate way,  
4 you were familiar with that policy?

5 A Yes.

6 Q And you knew that the policy said that you  
7 should go and complain to personnel?

8 A Yes.

9 Q You had a copy of that policy with you?

10 A With me?

11 Q Yes. At that time, didn't you?

12 A Where?

13 Q You had in your possession during that period  
14 of time that policy?

15 A They have a policy book in the dorm.

16 Q And you actually physically went through that  
17 policy and you had actually physically been over that  
18 policy yourself in the dorm?

19 A Yes, sir, when I was in Holloway Hall, I did.

20 Q And, again, you had had training on more than  
21 one occasion, actually, on that policy?

22 A Yes.

23 Q And there was no doubt in your mind, was

p. 165

1 there, that your procedure would be to go and complain  
2 about that to Debra Spann?

3 A Sir, I didn't want to start any problems.

4 Q I didn't ask you that. There was not any  
5 doubt in your mind what the policy was and what you were  
6 to do?

7 A Yes. I knew what the policy was.

(McMillan dep. P. 163-165). Her denial in the brief does not stand up to her own testimony.

9. McMillan does not specifically recall that her in service training covered anti-harassment but she does not deny that it did.

Plaintiff's Response: The plaintiff disputes that there is any evidence in this case to support this statement by the defendant, and it is due to be stricken in accordance with Section 2 of the Court's Rule 16 Scheduling Order (Doc. 15) and paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26) The plaintiff disputes that any training that may have been provided was effective if she cannot recall it having been provided during the years she has been employed by the defendant.

DYS' REPLY: Please see above. Clearly the training was effective because the Plaintiff clearly understood the policy and procedures. She simply unreasonably chose not to follow it.

10. She does however, specifically recall receiving training regarding the DYS anti-harassment policy after her first six months of employment.

Plaintiff's Response: The plaintiff disputes that there is any evidence in this case to support this statement by the defendant, and it is due to be stricken in accordance with Section 2 of the Court's Rule 16 Scheduling Order (Doc. 15) and paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Please above. The Plaintiff conceded facts in her deposition that show this denial was false.

11. It is not in dispute that at all times relevant the alleged harassment, Ms. McMillan was aware of the policy and aware of the reporting procedures as a result of the Defendant's dissemination of and training regarding the policy.

Plaintiff's Response: The plaintiff disputes that there is any evidence in this case to



support this statement by the defendant, and it is due to be stricken in accordance with Section 2 of the Court's Rule 16 Scheduling Order (Doc. 15) and paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26) The plaintiff disputes that the assertion by DYS in footnote 1 that her participation in a prior race discrimination suit involving a former employer has any relevance to her knowledge of this defendant's policies and reporting procedures.

DYS' REPLY: Please above. The Plaintiff clearly testified to facts that show this denial was false.

13. McMillan does not allege that she was discharged, and has no evidence of a demotion or reassignment to an undesirable reassignment.

Plaintiff's response: Plaintiff admitted that she was not discharged but "disputes that her reassignment was not undesirable due to the continued harassment and retaliation she faces."

DYS' REPLY: McMILLAN asked for the transfer. Phyllis Rankins did exactly what Ms. McMILLAN wanted by transferring Ms. McMILLAN to another dorm. (McMillan Deposition, Exhibit 1 pg 131 line 16 - pg. 134 line 14).

14. Mr. Hardy constantly gave McMillan average or above average evaluations and she has received all the privileges of employment to which she is entitled."

Plaintiff's Response: The plaintiff admits that her evaluations were average or above average, but disputes that defendant Hardy was responsible for all of the evaluations. The plaintiff specifically disputes that she has received all the privileges of employment to which she is entitled; e.g., a workplace free of gender-based discrimination or retaliatory conduct

DYS' REPLY: McMillan indicated during her deposition that Mr. Hardy gave her good evaluations. (Exhibit 1 - pg. 175 line 6 - pg. 176 line 7) The Plaintiff's response that she

“disputes that she has received all the privileges of employment that she is entitled; e.g., a workplace free of gender-based discrimination and retaliatory conduct” is non-responsive to the facts for paragraph 14. DYS disputes this legal conclusion by the plaintiff and submits that the Plaintiff has failed to submit any case law to support her non-responsive legal conclusion because there is no such case law. The facts in this case are clear that the Plaintiff has suffered no adverse employment action.

15. The Plaintiff has no evidence that she suffered any significant change in her employment status.

Plaintiff’s Response: The plaintiff disputes this unsupported conclusory statement by the defendant, and states further that it is due to be stricken in accordance with Section 2 of the Court’s Rule 16 Scheduling Order (Doc 15) and paragraph 8 of this Court’s Order dated November 26, 2007. (Doc 26).

DYS’ REPLY: Ms. McMillan testified at her deposition that her employment duties have not changed since she started working at DYS; in particular, her employment duties did not change despite a transfer to different dorms at DYS. Please see McMillan’s Deposition (Exhibit 1 pg. 171 line 13 - pg. 173 line 12). Not only has the Plaintiff failed to submit evidence of any significant change in her employment status, she has conceded that there was no such change.

16. McMillan claims that she eventually decided to get away from Mr. Hardy by seeking reassignment to a different dorm.

Plaintiff’s Response: Admitted by the plaintiff that she had sought a move to another dorm from Hardy and that he refused her permission to do so. The plaintiff further admits that she told Hardy she needed a transfer so that she could work a second job, even though she did not

have a second job at the time; and, that she went over Hardy's head seeking approval after Hardy threatened her and told her that it would take her at least two years to get a transfer away from his supervision (PX 1: Declaration of McMillan ¶ 11)

DYS' REPLY: The Plaintiff's response was again contradicted by her own testimony. Michael Hardy did not threaten Ms. McMillan by telling Ms. McMillan that it would take two years to transfer to another dorm. Michael Hardy suggested that Ms. McMillan speak with Mr. Hardy's supervisor if she wanted to transfer. (Exhibit 1 pg. 285 line 1 - pg. 286 line 16).

17. She claims that on or about June 25, 2005, she went to see Hardy supervisor, Ms. Phyllis Rankings, about the transfer.

Plaintiff's Response: The plaintiff disputes this statement and states that the undisputed evidence in this case is that she spoke to Ms. Rankins and Ms. Spann on June 15, 2005. (PX 2: Spann Meeting Notes/ITU Time & Attendance Report; 6/15/05)

DYS' REPLY: Only the actual date of this meeting is in dispute. Ms. Spann testified that the report took place on June 14. (Spann Depo. P. 41). McMillan claims it took place on June 16. (McMillan dep. P. 42). This two day difference is not material.

18. Ms. McMillan concedes that she did not intend to report any alleged harassment pursuant to the anti-harassment policy, but simply saw Ms. Rankins because she sought a reassignment to a different dorm.

Plaintiff's Response: The plaintiff admits that she did not intend to report Hardy's sexual harassment due to his intimidation of her and due to DYS acquiescence in the sexually charged environment at the Mt. Meigs campus (PX 1: Declaration ¶ 12)

DYS' REPLY: Plaintiff admitted that she did not intend to report Hardy's alleged sexual

harassment but claims that was due to “DYS acquiescence in the sexually charged environment at the Mt. Meigs campus.” Ms. McMillan’s affidavit (Doc. 44-2, Exhibit 1 to Plaintiff’s opposition brief, paragraph 12) recites this denial but it does not support her claim that DYS acquiesces in the sexually charged environment at Mt. Meigs.” There is simply no evidence in the record to support this outrageous and blatantly false claim.

19. McMillan claims that Rankins pressed her for the reason for requesting a dorm reassignment and Ms. McMillan told Ms. Rankins that she was being sexually harassed by Hardy.

Plaintiff’s Response: The plaintiff disputes this statement on the grounds that no evidence is presented by the defendant to support it and it is due to be stricken in accordance with paragraph 8 of this Court’s Order dated November 26, 2007. (Doc 26) The plaintiff states that she finally told Ms. Rankins of the harassment she was enduring when Rankins would not grant her request to move to another dorm. The plaintiff’s emotional distress overcame her fear of Hardy and her suspicion of DYS’ willingness to address the issue. (PX: Declaration ¶ 12)

DYS’ REPLY: This partial denial is insignificant because the fact is clear that the Plaintiff NEVER decided to follow the sexual harassment policy. DYS agrees that the plaintiff told Ms. Rankins about alleged incidents involving Ms. McMILLAN and Mr. Hardy in order to get approval from Ms. Rankins to transfer to another dorm. However, the Plaintiff again contradicted her statement that “the plaintiff’s emotional distress overcame her fear of Hardy and her suspicion of DYS’s willingness to address the issue.”(Exhibit 1, McMillan Depo. pg. 289 line 2 - pg. 290 line 17).

20. Ms. Rankins, as required by DYS policy and procedure, instantly required Ms.

McMillan to speak with DYS Personnel Director, Debra Spann.

Plaintiff's response: The plaintiff admits that Ms. Rankins sent her to talk to Ms. Spann about the hostile work environment and sexual harassment she endured under Ms. Hardy, but disputes that the defendant has offered any evidence to support its allegation about DYS policy and procedure.

DYS' REPLY: As stated above, that issue is not actually in dispute according to the Plaintiff's own deposition testimony.

DYS' Policy and Procedures Policy Number 3.13.2 indicates that reports of sexual harassment should be made to the Department Personnel Manager. (Exhibit 4) Further, DYS agrees that Ms. Rankins told Ms. McMillan to go and speak with Ms. Spann about Ms. McMillan's allegations against Michael Hardy.

21. Ms. McMillan only went to Personnel, as required by the DYS anti-harassment policy and procedure, and made a report of the alleged sexual harassment.

Plaintiff's Response: The plaintiff admits that this was her first report regarding the hostile work environment and sexual harassment she endured under Mr. Hardy, and states that she has been fearful of the consequences of reporting due to the unwillingness of DYS to enforce its policy on sexual harassment. (PX 1: Declaration ¶ 6)

DYS' REPLY: DYS disputes the unsupported and conclusory statement that the plaintiff alleges that "she was fearful of the consequences of reporting due to the unwillingness of DYS to enforce its policy on sexual harassment." The Plaintiff has submitted no credible evidence to support her claim that she was fearful of the consequences of reporting sexual harassment. In addition, The plaintiff's statement does not respond to the facts as alleged in paragraph 21.

The Plaintiff's affidavit, at paragraph 6, claims that **Mr. Hardy** had told her that complaining would do no good. She concedes in her affidavit that her decision was based in part on Mr. Hardy's word only. However she also asserts the hearsay argument, without any factual support to back up her self serving claim, that "she also knew" about others who were "accused of harassment by another employee," and an employee who was allegedly "harassed by" another employee. She does not say these employees ever complained to DYS, or that any of them ever actually filed a complaint of sexual harassment in compliance with the DYS policy and procedure and there is no evidence in this case that any of them did so. Her unsupported hearsay claims are insufficient to create a factual dispute regarding whether DYS has an effective policy—particularly in light of the overwhelming evidence that it WAS so effective in this case.

24. Over the telephone, Ms. Rankins instructed Ms. McMillan to temporarily report to Trustee Hall. Ms. McMillan was soon thereafter permanently reassignment to the ITU dorm pursuant to her request. (Exhibit 8; Hardy transcript P. 144)

Plaintiff's Response: The plaintiff admits that she was told to report to the Intensive Treatment Unit dorm and was assigned to the Trustee dorm for one day. The plaintiff disputes the statement that she specifically requested to be reassigned to the ITU dorm. (PX 1: Declaration ¶ 12)

DYS' REPLY: The plaintiff specifically requested to Ms. Rankins to be transferred to a different dorm. The plaintiff did not specify what dorm she wanted to be transferred to; Ms. Rankins transferred Ms. McMillan to another dorm as Ms. McMillan requested. Please see McMillan's deposition ( Exhibit 1 pg 131 line 16 - pg. 134 line 14)

26. It is noteworthy that, assuming Ms. McMillan had not schemed to sue DYS before

she made the report of alleged sexual harassment, within two weeks of reporting the alleged harassment Ms. McMillan clearly had a change of hear, because by July 23, 2005, approximately two weeks later, Ms. McMillan had hired a lawyer in Birmingham and filed an EEOC Charged of Discrimination against DYS. (PX3; EEOC Charge of Discrimination).

Plaintiff's Response: The plaintiff admits that she filed a charge of discrimination, as required by Title VII, with the EEOC on July 23, 3005. She disputes the additional allegations of this statement on the grounds that the defendant has not produced any evidence which would support such conclusory allegations, and they are due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc 26)

DYS' REPLY: The Hearing Officer and the State Personnel Board found that the Plaintiff's testimony was "exaggerated and lacked complete credibility and candor. Clearly, McMillian possessed a host of other personal motivations for her testimony." (Exhibit 6, p. 29).

27. Between January 2005 and June 25, 2005- the date Ms. Rankins granted her request for reassignment to ITU - Ms. McMillan concedes that she rarely saw Mr. Hardy.

Plaintiff's Response: The plaintiff disputes that statement on the grounds that the defendant has not produced any evidence which provides a foundation for it. The plaintiff state further that she was assigned to the ITU dorm on June 15, 2005 (PX 1: Declaration ¶ 12)

DYS' REPLY: Ms. McMillan indicated during her deposition that before Ms. Rankins transferred Ms. McMillan, she has not had any contact with Mr. Hardy. (Exhibit 1 pg. 305 line 5 - line 19)

28. In fact she claims to have only had one allegedly sexually harassing encounter with him during this time period.

Plaintiff's Response: The plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc 26) The plaintiff states further that Hardy's conduct was constant throughout this time period (PX 1: Declaration ¶ 10)

DYS' REPLY: Please see the reply to paragraph 27 above. Further, Ms. McMillan indicated during her deposition that Mr. Hardy asked her to go to a hotel in April 2005 to talk, not to have sex as Ms. McMillan alleges in response to this paragraph. (Exhibit 1 pg. 300 line 9 - pg. 301 line 16). She testified that in January 2005, her shift changed and she had contact with Hardy "a couple of times." (Exhibit 1 pg. 173 line 6 - 174 line 8).

29. She claims that in April 2005, Mr. Hardy asked her to go to a hotel with her.

Plaintiff's Response: The plaintiff admits that Hardy asked her to go to a hotel with him for sex in April of 2005, and that he was very angry with her when she refused his request. (PX 1: Declaration ¶ 10)

DYS' REPLY: Please see the reply to paragraph 28.

31. The statute of limitations (180 days before the EEOC COD was filed) was January 13, 2005.

Plaintiff's Response: The plaintiff admits that January 13, 2005 is 180 days before July 12, 2005, but disputes that this limits her sexual harassment or hostile environment claim against these defendants.

DYS' REPLY: As discussed below, whether the Plaintiff's statute of limitations has expired hinges on whether the Plaintiff has set forth facts to establish the existence of a hostile



environment claim. The Defendant submits that the Plaintiff has only shown discrete act claims that do not arise to the level of a hostile environment claim.

32. Soon after Ms. McMillan's report to Ms. Spann and soon after the investigation began, several events transpired that resulted in DYS Executive Director Walter Wood taking action to prohibit any appearance of retaliation by DYS.

Plaintiff's Response: The plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007 (Doc 26)

DYS' REPLY: DYS prevented any attempts of retaliation by other employees against Ms. McMillan. Please see McMillan's deposition (Exhibit 1 pg. 179 line 3 - pg. 188 line 10). The Plaintiff essentially conceded that she does not have a valid claim of retaliation. This claim is nonsense.

33. The first event was a memo, or series of memos, by Mr. Hardy's staff expressing her support for Mr. Hardy and their opposition to anyone who accused Mr. Hardy of inappropriate conduct.

Plaintiff's Response: The plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc 26)

DYS' REPLY: Please see the reply to paragraph 32.

34. The second event was a planned meeting with Ms. McMillan about her transfer to a different dorm.

Plaintiff's Response: The Plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc 26)

DYS' REPLY: Please see the reply to paragraph 32.

35. The third was a so-called "grievance" Mr. Hardy filed against Ms. McMillan. Hardy filed the so-called grievance memo with Ms. Spann, which was not the proper grievance procedure.

Plaintiff's Response: The plaintiff disputes this statement on the grounds that the defendant has not produced or referenced any evidence in the record to provide a foundation for it, and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Please see the reply to paragraph 32.

36. In response to these events, the Defendant-through Executive Director Walter Wood, Jr., prevented any meetings from taking place with Ms. McMillan, stopped the so-called grievance cold, and arranged immediately for State Personnel to come to DYS and conduct a special supplemental training seminar on anti-retaliation. An Assistant Attorney General conducted the training for all DYS employees.

Plaintiff's Response: The plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Please see the reply to paragraph 32.

40. A part of the basis for termination was Mr. Hardy's conduct during the investigation that DYS perceived as attempted retaliation.

Plaintiff's Response: See the plaintiff's response to number 32 above.

DYS' REPLY: DYS agrees that Mr. Hardy's action after Ms. McMillan filed a sexual harassment claim against Hardy was part of the basis for DYS to terminate Hardy.

41. DYS successfully prevented Mr. Hardy from retaliating against Ms. McMillan, yet Ms. McMillan now sues DYS for alleged retaliation.

Plaintiff's Response: The plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Please see the reply to paragraph 32.

42. Since Mr. Hardy's discharge, Ms. McMillan has complained about retaliation on several occasions and on each occasion she has been interviewed and her allegations were investigated.

Plaintiff's Response: The plaintiff admits that she has complained of retaliation but disputes the remaining allegations on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Please see McMillan's deposition (Exhibit 1 pg 180 line 6 - 18). Ms. McMillan complains that her co-workers mistreat her, and here she complains that her second

similar complaint did not cause those same co-workers to give a second recorded statement in connection with the investigation of the second complaint against them.

43. She has suffered no adverse employment actions and there has been no retaliation - and certainly none by DYS.

Plaintiff's Response: The plaintiff disputes this unsupported conclusory allegation by the defendant and states that has been subjected to adverse employment acts and a hostile work environment on account of her sex and to retaliation on account of her complaints about her sexual harassment. Specifically, she has also been denied off-days for which she has not been compensated; had been isolated and refused training by her supervisor and co-workers; had a discriminatory disciplinary warning placed in her file without notice and included on her evaluation; suffered a lowered evaluation; and, has been placed under surveillance by her co-workers at the instruction of her supervisor. (PX1: Declaration¶¶ 12,13,15)

DYS' REPLY: Please see the reply to paragraph 32 and please see McMillan's deposition which indicates that she has not lost any money. (Exhibit 1 pg 175 line 6-23). DYS disputes the plaintiff's additional allegations as evidence of adverse employment actions. The plaintiff has not provided any evidence to support this conclusion other than the plaintiff's own declaration.

44. Ms. McMillan does not actually complain about retaliatory action by DYS but rather complains that her co-employees retaliated against her on behalf of Mr. Hardy-even though DYS previously terminated Mr. Hardy's employment.

Plaintiff's Response: The plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc.

26) Her complaint in this action specifically includes a count of retaliation against DYS. (Doc. 1:¶¶ 12,19)

DYS' REPLY: The plaintiff indicates that there is a count of retaliation against DYS in the plaintiff's complaint in paragraph 12 and paragraph 19; however the complaint does not allege what action DYS took to retaliate against the plaintiff. (Exhibit 5 Plaintiff's Complaint page 3 and 5). Throughout her deposition, McMillian clearly complained only about her co-workers in connection with the retaliation claim. She has absolutely no evidence to show any nexus or connection between those co-workers' alleged actions and her sexual harassment complaint against Hardy. The claim is not only without evidence of a nexus, but the claim defies common sense.

45. DYS has taken every conceivable action to protect Ms. McMillan and prevent any retaliation.

Plaintiff's Response: the plaintiff disputes this statement on the grounds that the defendant has not produced any evidence to provide a foundation for it and it is due to be stricken in accordance with paragraph 8 of this Court's Order dated November 26, 2007. (Doc. 26)

DYS' REPLY: Please see the reply to paragraph 32.

46. Plaintiff's Additional Fact: McMillan was subjected to inappropriate sexual remarks by Hardy and to requests from him for a sexual relationship while assigned under his supervision at DYS. The work environment at the Mt. Meigs campus was permeated with sexual commentary, innuendo and misconduct. (PX1: Declaration¶¶ 2,3,4,5,6)

DYS' REPLY: DYS disputes the facts as alleged by the plaintiff. The plaintiff's alleges

these conclusory facts without additional evidence to support them other than the plaintiff's declaration.

47. Plaintiff's Additional Fact: When McMillan resisted Hardy's advances, he attempted to overcome her resistance by bragging about his sexual prowess and by informing her of his power on the campus and his skill in overcoming other complaints of sex discrimination. (PX1: Declaration¶ 6) McMillan initially thought that Hardy would leave her alone once she made it clear that she did not want a relationship with him, but despite her continued refusal to have a relationship with him, Hardy engaged in inappropriate conduct on every occasion that he could be alone with her during the entire time that she was under his supervision at Paige Hall. (PX1: Declaration¶¶ 2,3,4,5,7, 10)

DYS' REPLY: DYS disputes the facts as alleged by the plaintiff. The plaintiff's alleges these conclusory facts without additional evidence to support them other than the plaintiff's declaration. Her unsupported factual allegations are insufficient to create a factual question as to a claim against DYS.

48. Plaintiff's Additional Fact: McMillan was persistently propositioned for sex and sexual favors by her immediate supervisor, Michael J. Hardy. Hardy has requested that she perform fellatio on him, and offered her money and other material things if she would perform oral sex on him. Hardy frequently bragged to McMillan about his sexual prowess with other female workers at the defendant's Mount Meigs campus. For example, Hardy has stated to McMillan he can not "f-k all night like he used to" and that he could "only f-k real hard for 5 or 6 minutes" at this stage of his life. On another occasion, Hardy grabbed both her breast while she was on duty at DYS. All of this behavior was uninvited, unwelcome, emotionally and physically

intimidating, and McMillan asked Hardy to stop harassing her but he would not. Hardy also stated to McMillan that he loved big “titties” and made frequent requests to suck McMillan’s breasts. Hardy also spoke regularly of his abilities with regard to oral sex and asked to perform oral sex on McMillan. McMillan always refused Hardy’s overtures and requested that he leave her alone. (PX1: Declaration ¶¶ 2,3,4,5,7, 10)

DYS’ REPLY: DYS disputes the facts as alleged by the plaintiff. The plaintiff alleges these conclusory facts without additional evidence to support them other than the plaintiff’s declaration. Her unsupported factual allegations are insufficient to create a factual question as to a claim against DYS.

49. Plaintiff’s Additional Fact: In the winter and spring of 2005, Hardy began asking McMillan to go to hotels with him for sex and offered to buy her a car, tires and other goods in exchange for her compliance. She did not give in to these requests and in the middle of April, Hardy informed her that another employee was “disrespecting” her and that he would defend her if she would go to a hotel with him to discuss it over drinks. McMillan told Hardy that there was no way that she was going to a hotel with him and he became very angry with her. He confronted her at work the next day and told her that she had “lost her foundation” at DYS. McMillan understood this threat to be another effort by Hardy to intimidate her into compliance with his demands. Hardy refused McMillan’s efforts to move to another work assignment in order to get away from his supervision and continued to treat her in hostile manner until McMillan reported him on June 15, 2005. (PX1: Declaration ¶ 10)

DYS’ REPLY: DYS disputes the facts as alleged by the plaintiff. The plaintiff alleges these conclusory facts without additional evidence to support them other than the plaintiff’s

declaration. Her unsupported factual allegations are insufficient to create a factual question as to a claim against DYS.

50. Plaintiff's Additional Fact: After McMillan reported Hardy she was transferred to another dorm at the Mount Meigs facility, she was required to work eight or more days consecutively with no time off due to this move. (PX1: Declaration ¶ 12) She was even required to work two shifts on the day that she was initially reassigned by Rankins. (PX1: Declaration ¶ 7: Daily Time & Attendance Reports, 6/11-19/05)

DYS' REPLY: The Plaintiff conceded facts that clearly show that this was not punitive as a result of Ms. McMillan requesting a transfer to a different dorm. (Exhibit 1 pg. 134 line 22 - pg. 136 line 4). McMillan was simply immediately assigned to a new dorm and McMillan never told anybody that she would thereby be required to work eight days without a day off.

51. Plaintiff's Additional Fact: Since arriving at the new dorm, she has been ostracized by personnel who refused to help her learn the new procedures. PX: EEOC charge, 7/12/05) She has also been singled out by her supervisor for heightened scrutiny and surveillance by co-employees. Between November 2005 and September 2007, the unit manager or staff wrote 27 memos concerning McMillan. Most document a conversation or incident that involved McMillan. (PX8: Memos/Reports at ITU re: McMillan) In January and February 2006 alone, immediately following McMillan's filing of the retaliation charge, nine memos were written on her. (PX9: Memos). In November 2006, McMillan's unit manager wrote her up for not attending a training session which she was never notified about. (PX1: Declaration ¶ 15)

DYS' REPLY: DYS disputes the facts as alleged by the plaintiff. The plaintiff's alleges these conclusory facts without additional evidence to support them other than the plaintiff's



declaration. Plaintiff does not allege that any of these facts resulted in any tangible loss. These claims simply do not rise to the level necessary to establish a claim of retaliation against the Department. Moreover, there is no evidence whatsoever to establish any nexus to the complaint against Hardy.

52. Plaintiff's Additional Fact: Between April 2006 and February 2007, McMillan's supervisor wrote six memos about her being tardy to work. (PX10: 3 Memos re: Tardy) On February 12, 2007, he placed a disciplinary warning in her file for being late three times. (PX 11: Disciplinary Warning ) Numerous other employees were late for work or left work early more than three times in the March-April 2006 time period alone, but only McMillan was written up. (PX 12: Table of ITU Employee Sign In/Out Times, March-April 2006 with supporting Time & Attendance Reports) (PX1: Declaration ¶ 15, 16)

DYS' REPLY: DYS disputes the facts as alleged by the plaintiff. If they are true they do not establish a claim of retaliation. Neither does the Plaintiff have any evidence to suggest a nexus between these writeups and her complaint against Hardy.

53. Plaintiff's Additional Fact: Prior to filing her EEOC charges in July and December of 2005, the ratings on McMillan's two preceding appraisals (2003 and 2004) and subsequent appraisal (2006) were in the "Exceeds Standards" category. The rating she received on the performance appraisal covering 2005 was in the "Meets Standards" range and continued three unsatisfactory marks (attendance, punctuality and cooperation with coworkers). PX 13: Evaluations, 2003-2006)

DYS' REPLY: DYS disputes the facts as alleged by the plaintiff. The plaintiff's alleges these conclusory facts without additional evidence to support them other than the plaintiff's

declaration. The plaintiff does not offer any evidence that there is a causal link to her filing the EEOC charge and subsequent lower appraisals.

54. Plaintiff's Additional Fact: McMillan believed that reporting Hardy's harassment would result in her losing her job or in some other form of retaliation. She formed this belief from Hardy's comments on his power and influence with the "clique" on the campus; his story of how he had stifled a prior complaint of sex discrimination; and, from the numerous unaddressed instances of improper sexual relationships between staff members, and between staff members and students on the Mt. Meigs campus of DYS. (PX1: Declaration ¶ 6)

DYS' REPLY: DYS disputes the facts as alleged by the plaintiff. The plaintiff's alleges these conclusory facts without additional evidence to support them other than the plaintiff's declaration. Further, the plaintiff's statements are hearsay. Finally, the Plaintiff concedes that her belief that Hardy had power was in error. (Exhibit 1, McMillian dep. Pg. 119 line 20 - pg. 120 line 12).

55. Plaintiff's Additional Fact: DYS negligently permitted Hardy to supervise female subordinates including McMillan, even assigning responsibilities to him for conducting sexual harassment training,, with the knowledge that he had previously been accused of sexual harassment. (PX 14: Hardy Memo; PX 4: Spann Memo to Wood 7/19/05)

DYS' REPLY: DYS disputes the facts as alleged by the plaintiff. The Plaintiff has produced absolutely no evidence whatsoever of any report of sexual harassment against Hardy prior to McMillian's report.

56. Plaintiff's Additional Fact: Personnel manager Debra Spann acknowledged to Director Wood that the department's implementation of its sexual harassment policy was

ineffective, and that she was securing outside assistance to train DYS staff on the policy. PX 4: Spann Memo to Wood 7/19/05) Director Wood also sought assistance from the Alabama Attorney General's Office for additional training for DYS staff on retaliation prevention training following the discriminatory actions against McMillan. ( PX 15: ALJ Hearing Transcript: p. 400:1-23)

DYS' REPLY: DYS disputes that the McMillan investigation was the sole reason for the retaliation prevention training that DYS conducted. Moreover, DYS submits that it is logically nonsensical to suggest that because the Department conducts training on the anti-discrimination policies the policies are therefore necessarily ineffective.

57. Plaintiff's Additional Fact: DYS lodged charges against Hardy for his sexual harassment and retaliation against McMillan. He was found guilty of these acts, and his employment was terminated effective at the close of business January 6, 2006. (PX 4: Spann Memo to Wood; PX 5: Calendar report to Wood; PX 6: termination letter to Hardy)

DYS' REPLY: Hardy was discharged for his inappropriate conduct with McMillian and his attempt to retaliate against her for filing a charge of discrimination. He was not found guilty of anything and the Department has never suggested that his conduct satisfies all the elements of a Title VII claim against the Department for which the Department should therefore compensate McMillian.

58. Plaintiff's Additional Fact: Hardy exercised his right to appeal DYS's decision to the Alabama State Personnel Board which appointed an administrative law judge to take testimony and receive evidence on the issues in his termination. (PX 16: ALJ Report, p. 6¶3) DYS Director Wood testified specifically:

7 I concurred with that  
 8 decision and primarily for the two reasons  
 9 that you just enumerated. One was that we  
 10 had, in the view of our personnel director, a  
 11 substantiated sexual abuse issue, But even  
 12 more important was this emerging problem with  
 13 what I believe was an attempt to intimidate  
 14 this lady and in some way retaliated for this  
 15 complaint being filed. That emerged as, even  
 16 to me, an almost even more serious issue than  
 17 the initial complaint. So based on those two  
 18 issues, I concurred that the employment  
 19 should be terminated, and this is the letter  
 that does that (PX 15: Hearing Transcript, p.407)

The charges against Hardy by DYS were upheld by the judge following two days of testimony and post-trial briefing by the parties. (PX16: ALJ Report, pp. 29-31)

DYS' REPLY: The Administrative Law Judge found that Michael Hardy violated the grievance procedure and DYS' sexual harassment policy; however, the judge did not find that McMillan was a victim of sexual harassment. (Exhibit 5 pg. 29 of 32). In addition the personnel board found that McMillan was not sexually harassed but Hardy's termination was upheld based on actions that Hardy took after McMillan filed a sexual harassment complaint (Exhibit 7 pg. 1-2).

\_\_\_\_\_ **II. *Faragher/Ellerth*.** The Defendant submits that it is entitled to the affirmative defense under *Faragher/Ellerth*.

**Tangible Employment Action.** The Plaintiff argues that she suffered a "tangible employment action." Under *Faragher/Ellerth*, the question is whether the employer can be held strictly liable for the actions of a supervisory employee and whether the employer is entitled to an affirmative defense. The question under the *Faragher/Ellerth* affirmative defense is essentially

whether the plaintiff suffered an employment action that would have put the employer on notice and which the employer would have necessarily ratified. Essentially it is an action that effects that Plaintiff's economic interests. For example a transfer given or refused that does not change the Plaintiff's pay is not such an action. If such an action was taken, then the employer is strictly liable and has no affirmative defense available under *Faragher/Ellerth*. On the other hand, if the supervisor took no such action, then the affirmative defense is available.

In this case the Plaintiff claims that the affirmative defense is not available. She is wrong. The plaintiff alleges that the following action by Michael Hardy constitutes a tangible adverse employment action:

(1) Refusal to permit an employee, especially a victim of sexual harassment, to request a transfer. Obviously this is not a tangible employment action that would avoid the *Faragher/Ellerth* defense.

McMillan further muddles the issue in her brief by claiming that she suffered the following tangible employment actions as a consequence of her complaint of sexual harassment and hostile environment by Hardy<sup>2</sup>:

- (1) Working a double shift on the day of her complaint of sexual harassment.
- (2) DYS did not allow plaintiff to have her regular days off after plaintiff transferred to another dorm.
- (3) Plaintiff worked eight consecutive days after being reassigned to ITU.

---

<sup>2</sup> These actions do not relate to the claim of supervisory sexual harassment by Hardy, but relate to her general claim that her coworkers have all retaliated against her because she complained about Hardy. These actions were all taken by co-workers and the Plaintiff claims they were taken because she complained against Hardy. The Plaintiff has absolutely no evidence to establish a causal link between these co-workers' alleged actions and Michael Hardy.

(4) Plaintiff was subjected to isolation and ostracized by her co-workers.

(5) Plaintiff was subject to unwarranted surveillance at the suggestion of her supervisor.

(6) Wrongful disciplinary actions were placed in the plaintiff's personnel folder and on her evaluation.

(7) Plaintiff was falsely accused of failing to attend a training session for which she did not receive notice.

None of these claims could serve as a tangible employment action to avoid the *Faragher/Ellerth* defense because they were alleged to have been committed by her co-workers after Hardy was discharged.

Second, she claims that the elements of the defense are unavailable. The Plaintiff argues that the elements are: (1) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) the plaintiff employee unreasonable failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. (Doc. 44, p. 30). The Plaintiff claimed that the Defendant had failed to show both prongs.

Prong One. The Plaintiff argued that there is no policy on sexual harassment, and no evidence regarding implementation, training, or effectiveness of the policy. She is clearly wrong, and she admitted those facts in her deposition.

In her brief, the Plaintiff argues, without factual support, that the DYS personnel manager's finding **in this case** proves that the policy and procedure was ineffective. She also argues that the Director's decision to request DYS employee training from the Attorney General

was an admission of the ineffectiveness of the policy. That argument holds no water. The DYS Personnel Manager clearly believed that Hardy had harassed the Plaintiff, and she was clearly frustrated by that, but it defies logic that the person charged with investigating allegations of harassment could so strongly uphold the policy by finding that it was violated yet at the same time prove that it is ineffective. The Personnel Director's decision, ultimately upheld by State Personnel, to discharge Mr. Hardy is conclusive proof of the **effectiveness** of the policy.

The Plaintiff then deceitfully argues that "there is evidence in this case that the defendant had knowledge that Hardy had prior accusations of sex discrimination, citing her exhibit 14. That exhibit the Plaintiff referenced does not show any prior accusation of sex discrimination against Hardy. But even if it did that would not raise a factual question whether the policy was ineffective. Rather the facts of this case, i.e. that the plaintiff mentioned to a supervisory employee that she had been sexually harassed and the policy was immediately executed with perfect efficiency and effect, show that the policy was effective.

Next the Plaintiff again deceitfully argues that she does not remember receiving any training on the policy. Her deposition testimony clears that misrepresentation up and the Plaintiff cannot contradict herself and thereby create a material issue of fact.

Prong Two. The Plaintiff next argues that the Plaintiff's failure to take advantage of the preventive and corrective opportunities provided by the employer was "reasonable." Again, the Plaintiff relies on the Personnel Manager's statement that "all staff should be re-trained on sexual harassment. It appears to me thinking has not changed in this department. We cannot condone telling staff to do one thing and doing something else ourselves (it is my understanding Mr. Hardy went over sexual harassment at every staff meeting.) I have contacted Maxine Wheeler to

do Sexual Harassment Training for our staff as it did not sink in with State Personnel doing it.” The Department submits that this statement by the Personnel manager does not suggest that the Plaintiff’s refusal to use the sexual harassment policy was reasonable. Rather, it shows that had the Plaintiff chosen to use the Department’s policy, the Department had a person conducting the investigations who would certainly take swift and effective remedial action—because that is exactly what she did.

Finally, the Plaintiff argues that “sexual misconduct was rampant on Mt. Meigs campus and the administration did little, if anything, to correct it.” That self serving and unsupported conclusion was taken from the Plaintiff’s affidavit. However the Plaintiff has submitted no evidence of any reports of sexual harassment that were given to the Department to which the Department failed to respond. The general claim that “sexual harassment was rampant” is quite meaningless. It would mean something if the Plaintiff could show that allegations of sexual harassment were reported to Debra Spann but she chose to do nothing about them, but Debra Spann’s response to THIS report of sexual harassment clearly shows that allegation is preposterous. The reason the Plaintiff has submitted no evidence to support that outrageous claim is because no such evidence exists.

### **III. JUDICIAL ESTOPPEL**

The Plaintiff claims the Department is judicially estopped from arguing that the prima facie elements of Title VII have not been met. (Doc. 44, p. 21). First, assuming for the sake of argument that the Plaintiff was correct, which she is not, the Department would still be entitled to summary judgment under the *Faragher/Ellerth* affirmative defense. Second, as discussed above, the Plaintiff cannot sue DYS and Michael Hardy separately but analyze the claims as though



Hardy and DYS were the same person. McMillan can sue Hardy *or* DYS for sexual harassment, but not both. Third, as more clearly discussed below, DYS has not taken an inconsistent position in any proceeding related to this case. Simply put, discharging Michael Hardy for violating the DYS Policy on sexual harassment does equate to discharging Michael Hardy for establishing the elements of a Title VII claim. At the hearing of the Michael Hardy discharge case, DYS made that clear. DYS clearly stated that the issue being tried in that hearing was **not** whether Title VII had been violated. (Exhibit 8, p. 5, lines 8-18). In addition at the conclusion of the hearing in a letter brief to Judge Weller, DYS made it clear that the:

...evidence clearly shows that Mr. Hardy conducted himself inappropriately with regard to Ms. McMillan. His termination is therefore warranted on that basis alone. Be certain that the Agency does not argue, and does not have to prove, that the elements of a claim of sexual harassment are met as a result of Hardy's inappropriate conduct with a subordinate employee.

(Exhibit 5).

The *New Hampshire v. Maine* case cited by the Plaintiff at p. 21 of her brief establishes the factors that courts consider to determine whether judicial estoppel should be invoked. *New Hampshire*, 532 U.S. 742, at 750-51. The factors that courts consider are in order to determine whether to invoke judicial estoppel are: (1) whether the party's later position is clearly inconsistent with its earlier position; (2) whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. DYS is not

judicially barred by the doctrine of judicial estoppel based on the above mentioned factors.

A. DYS has not taken a clearly inconsistent position with an earlier position.

The plaintiff cannot establish a prima facie case of sexual harassment and hostile work environment, or retaliation, by defendant Michael Hardy. The plaintiff asserts that DYS' earlier position in Michael Hardy's termination hearing was the opposite. DYS argues that the purpose of the Michael Hardy hearing was not to determine whether Michael Hardy retaliated or sexually harassed Ms. McMillan nor was the purpose of the hearing to determine whether Ms. McMillan's allegations against Michael Hardy established a prima facie case of sexual harassment or retaliation. Please see T. Dudley Perry, Jr.'s letter to Administrative Law Judge Weller (Exhibit 5), excerpted above. The purpose of the administrative hearing was to determine whether the DYS' decision to terminate Michael Hardy was appropriate; as a result of the administrative hearing, Judge Weller upheld DYS' decision to terminate Michael Hardy. (Exhibit 6 pg. 32) DYS does not dispute that during the hearing evidence was presented to the court to suggest that Michael Hardy violated DYS' policies, not Title VII as the plaintiff suggests.

B. DYS persuaded the administrative law judge that Michael Hardy's termination should be upheld; DYS did not persuade the judge that the plaintiff has established a Title VII claim of sexual harassment or retaliation.

The administrative law judge found that Michael Hardy violated DYS' policy against sexual harassment however the judge did not find that Ms. McMillan was a victim of sexual harassment. The Hearing Officer's recommendation indicated in relevant part:

Based on the evidence presented, the undersigned was convinced that Hardy had more than a work related relationship with McMillan and violated the DYS sexual harassment policy. The testimony of Harris also convinced the undersigned that Hardy made comments to McMillan which were inappropriate for the

workplace. However, the undersigned was NOT convinced that McMillan was the victim of sexual harassment. While Hardy's conduct as a supervisor was subject to disciplinary action, the undersigned does not believe that Hardy's advances were unwelcome. ... Nevertheless, that does not excuse Hardy for engaging in what he should have known could have been misconstrued as an inappropriate verbal exchange with a subordinate. Therefore, the undersigned does find that Hardy's verbal conduct supports termination.

(Exhibit 6 Recommended Order to the State Personnel Board - pg 29 of 32). In addition, the Hearing Officer did not find that Ms. McMillan's allegations against Michael Hardy establish a prima facie case of sexual harassment under Title VII nor did DYS present that issue to the court as indicated in T. Dudley Perry, Jr.'s letter to Judge Weller. (Exhibit 5)

The administrative law judge also held that Michael Hardy violated DYS' grievance procedure; however the judge did not state that Hardy's behavior established a prima facie case of retaliation under Title VII. (Exhibit 6 pg. 30-31) DYS did not persuade the judge that Michael Hardy retaliated against Ms. McMillan as the plaintiff suggests. Rather, the judge stated that Hardy's conduct "could also be potentially perceived as retaliatory;" and "whether the conduct actually reaches the level of retaliation is moot and shall not be addressed in this forum."

(Exhibit 6 pg. 31).<sup>3</sup>

C. DYS has not advanced an inconsistent position; thus there is no unfair advantage on the opposing party.

---

<sup>3</sup> The evidence clearly shows that Hardy's conduct was an *attempt* to retaliate, but that McMillan did not even know that Hardy had attempted to retaliate against her. (McMillan dep. P. 185, line 5 - 23). It is unreasonable to suggest that DYS could have successfully thwarted an attempt by a supervisor to retaliate against a subordinate, but still be liable for the supervisor's unsuccessful attempt. Generally, there is NO employer liability where the employer took immediate appropriate remedial action. *E.g. Watson v. Blue Circle, Inc.*, 324 F.3d 1252, 1257 (11th Cir.2003).

As indicated above, DYS has not advanced an inconsistent position about whether Ms. McMillan has a substantiated claim under Title VII of sexual harassment of retaliation; therefore DYS will not have an unfair advantage on Ms. McMillan in this instant case.

Each of the factor are not met in the instant case, and DYS should not be judicially barred from arguing that Ms. McMillan does not have a prima facie case of sexual harassment and hostile work environment or retaliation under Title VII.

#### **IV. HOSTILE WORK ENVIRONMENT STATUTE OF LIMITATIONS**

The Plaintiff misunderstands the issue of the statute of limitations. The Defendant argues in its motion for summary judgment that the Plaintiff has not shown the elements of a hostile environment claim. The Defendant asserts that the Plaintiff's claims only establish discrete act claims.

The statute of limitations for discrete act claims is different from the statute of limitations for hostile environment claims. It is true, of course, that if the Plaintiff had shown the elements of a hostile environment harassment claim, the entire period of time of the hostile environment would be one unlawful employment practice and the statute of limitations would not expire so long as one act occurred within the limitations period.

But since the Plaintiff's claims do not show a hostile environment claim, as shown in the Defendant's Brief, the statute of limitations did expire.

#### **V. PLAINTIFF'S U.S.C 1983 AND TITLE VII CLAIM MERGE \_\_\_\_\_**

\_\_\_\_\_The plaintiff's claims against Hardy under 42 U.S.C. 1983 and the plaintiff's claim against DYS under Title VII merge. The Plaintiff in this case has sued both Michael Hardy and DYS. Those cases are separate. The plaintiff claims that Hardy utilized his position as a

supervisor at DYS to sexually harass and create a hostile working environment for McMillan, and retaliated against McMillan in violation of 42 U.S.C. 1983. In addition, the plaintiff alleged that DYS, or its agents, has subjected the plaintiff to retaliation for making her complaints of sexual harassment and retaliation. The Plaintiff has sued both the Department and her former supervisor Michael Hardy for sexual harassment. However, she cannot recover from both. Either the Department or Michael Hardy must receive summary judgment. This is true because the relief granted under Title VII is against the “employer,” not individual employees whose actions would constitute a violation of the Act. *See Clanton v. Orleans Parish School Bd.*, 649 F.2d 1084, 1099 & n. 19 (5th Cir.1981) FN7; *see also* 42 U.S.C. § 2000e(b) (1988) (definition of “employer”); 42 U.S.C. § 2000e-2 (1988) (violation for “employer” to discriminate); 42 U.S.C. § 2000e-5(g) (1988) (relief for violation of § 2000e-2). This does not simply mean that Michael Hardy must be dismissed, but that one of the two must. The proper method for a plaintiff to recover under Title VII is by suing the employer, **either** by naming the supervisory employees as agents of the employer or by naming the employer directly. *See Busby v. City of Orlando*, 931 F.2d 764, 772 (11<sup>th</sup> Cir, 1991).

Throughout her brief the Plaintiff speaks of Hardy and the Department as though there were no distinction between the two. In the complaint, at paragraph 4, the Plaintiff notes that Hardy is sued in his individual capacity but not under Title VII. That is perplexing, because the claims are all based on sexual harassment and they are either under 42 U.S.C. 1983, or Title VII. In any event, the Plaintiff cannot avoid the limitation against suing two employers and get two bites at the apple by muddling the basis of her claims. This is true because the standard and analysis under both 42 U.S.C. 1983 and Title VII are identical. *See, e.g. See Stallworth v. Shuler*,

777 F.2d 1431, 1433 (11th Cir .1985) (“Where, as here, a plaintiff predicates liability under Title VII on disparate treatment and also claims liability under sections 1981 and 1983, the legal elements of the claims are identical”); *see also*, *Givens v. Chambers*, Slip Copy, 2008 WL 268723, 6 (M.D.Ala., 2008) (J. Dement) (discussing the statutory interplay between Title VII and 42 U.S.C. 1983).

As a result, the claims under 1983 and Title VII essentially merge, and they must be analyzed identically. Therefore, in summary, the Plaintiff cannot sue both Hardy and DYS. DYS submits that it is entitled to summary judgment.

### **CONCLUSION**

This Court should grant DYS’ motion of summary judgment because: (1) DYS is entitled to the Faragher-Ellerth defense; (2) the doctrine of judicial estoppel should not apply to the facts in the instant case; (3) the plaintiff’s claim is of a hostile work environment is barred by the statute of limitations; and (4) the plaintiff’s claims under 1983 and Title VII merge.

WHEREFORE the Defendant moves this Honorable Court to grant Defendant DYS’ motion for summary judgment

Respectfully submitted this 8<sup>th</sup> day of February 2008.

**s/ T. Dudley Perry Jr.**

T. Dudley Perry, Jr.

Bar Number: 3985-R67T

General Counsel

Attorney for the Defendant

Alabama Department of Youth Services

Post Office Box 66

Mt. Meigs, AL 36057

Telephone: (334) 215-3803

Fax: (334) 215-3872

E-Mail: [dudley.perry@dys.alabama.gov](mailto:dudley.perry@dys.alabama.gov)

**s/Sancha E. Teele**

Sancha E. Teele  
Assistant Attorney General  
Bar Number: 0103-H71T  
Attorney for the Defendant  
Alabama Department of Youth Services  
Post Office Box 66  
Mt. Meigs, AL 36057  
Telephone: 334-215-3803  
Fax: (334) 215-3872  
E-Mail: [sancha.teele@dys.alabama.gov](mailto:sancha.teele@dys.alabama.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 8<sup>th</sup> day of February, 2008, I electronically filed the foregoing, DEFENDANT ALABAMA DEPARTMENT OF YOUTH SERVICES' REPLY TO PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT ALABAMA DEPARTMENT OF YOUTH SERVICE'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jimmy Jacobs  
[E-mail:jacobslawoffice@charter.net](mailto:jacobslawoffice@charter.net)  
Attorney At Law  
143 Eastern Boulevard  
Montgomery, AL 36117  
Tel: (334) 215-1788  
Fax: (334) 215-1198

James Eldon Wilson  
Attorney at Law  
4625 Lomac Street  
Montgomery, AL 36106

**s/ T. Dudley Perry Jr.**

T. Dudley Perry, Jr.  
Bar Number: 3985-R67T  
General Counsel  
Alabama Department of Youth Services  
Attorney for the Defendants





**TERA A. McMILLAN v. STATE OF ALABAMA  
DEPARTMENT OF YOUTH SERVICES**

**TERA MCMILLIAN**

**January 22, 2008**

**Reagan Reporters, LLC  
Phone: 334.262.7556  
Fax: 334.262.4437  
[www.ReaganReporters.com](http://www.ReaganReporters.com)**

TERA MCMILLIAN - 1/22/2008

1

1           IN THE UNITED STATES DISTRICT COURT FOR  
2           THE MIDDLE DISTRICT OF ALABAMA  
3           NORTHERN DIVISION  
4

5   TERA A. MCMILLIAN            )

6       Plaintiff,                )

7                                 )

8       VS.                        ) CASE NO.: 2:07-CV-01-WKW

9                                 )

10   STATE OF ALABAMA DEPARTMENT )

11   OF YOUTH SERVICES, and        )

12   MICHAEL HARDY,                )

13       Defendants.                )

14       The deposition of TERA MCMILLIAN, taken by the  
15   Defendants, pursuant to the Federal Rules of Civil  
16   Procedure, before Kimberly B. Faucette, ACCR-309,  
17   Certified Court Reporter and Notary Public in and for the  
18   State of Alabama at Large, at the Alabama Department of  
19   Youth Services, Mt. Meigs, Alabama, on the 15th day of  
20   January, 2008, at 10:30 a.m., pursuant to notice, and  
21   continued on the 22nd day of January, 2008, at 9:00 a.m.,  
22   pursuant to notice.

23                       \*   \*   \*   \*   \*

TERA MCMILLIAN - 1/22/2008

2

1 APPEARANCES:

2

3 FOR THE PLAINTIFF: FOR DEFENDANT MICHAEL HARDY:

4 MR. JIMMY JACOBS MR. JAMES E. WILSON

5 Attorney at Law Attorney at Law

6 Montgomery, Alabama Montgomery, Alabama

7

8 FOR DEFENDANT ALABAMA DYS:

9 MR. T. DUDLEY PERRY, JR.

10 MS. SACHA TEELE

11 Attorneys at Law

12 Mt. Meigs, Alabama

13

14 ALSO PRESENT:

15 MR. GERRY LOVE

16 INDEX

17 EXAMINATION BY MR. PERRY.....1

18 DYS EXHIBIT NO. 1.....106

19 EXAMINATION BY MR. WILSON.....198

20 HARDY EXHIBIT NO. 1.....198

21 HARDY EXHIBIT NO. 2.....301

22 HARDY EXHIBIT NO. 3.....303

23

1                                    S T I P U L A T I O N S

2                    It is stipulated by and between counsel for  
3    the parties that this deposition is taken at this time  
4    by Kimberly B. Faucette, Court Reporter and Notary  
5    Public, State at Large, who is to act as commissioner  
6    without formal issuance of commission to her; that said  
7    deposition shall be taken down stenographically,  
8    transcribed, and certified by the commissioner.

9                    Except for objections as to the form  
10   of questions, no objections need be made at the time of  
11   the taking of the deposition by either party, but may be  
12   interposed by either party at the time the deposition is  
13   read into evidence, which shall be ruled upon by the  
14   Court on the trial of the cause upon the grounds of  
15   objection then and there assigned.

16

17

18

19

20

21

22

23

\* \* \* \* \*

TERA MCMILLIAN - 1/22/2008

4

1 TERA A. MCMILLIAN

2 having been first duly sworn, testified as follows,

3 to-wit:

4 EXAMINATION

5

6 BY MR. PERRY:

7 Q How are you, Ms. McMillian?

8 A I am doing good.

9 Q I guess the best place to start, obviously, we  
10 know each other?

11 A Yes.

12 Q You are Tera McMillian?

13 A I am.

14 Q What is your current position with the DYS?

15 A Youth services aid.

16 Q And you have been with DYS since 2002?

17 A Yes.

18 Q Let's talk about, first of all, some of the  
19 ground rules that we are going to follow here.

20 I am going to ask questions and I will try to be  
21 clear. Sometimes that is difficult and sometimes what I  
22 ask doesn't make sense.

23 If I do that, would you please tell me that you

1 don't understand what I am asking you?

2 A Yes.

3 Q Would it be fair, if you don't tell me, I am  
4 going to treat your answer as though you did understand  
5 what I asked? Is that fair?

6 A Yes.

7 Q I promise you, I am going to be  
8 straightforward, and my goal here is to communicate with  
9 you, okay? I want to know what you know, and to do  
10 that, we need to communicate, okay?

11 A Yes.

12 Q First of all, how many times have you been  
13 deposed before, total?

14 A Deposed?

15 Q Yes, ma'am.

16 How many times have you given a deposition?

17 A Once.

18 Q And that was when? In this case or another  
19 case?

20 A Another case.

21 Q You were also deposed once -- what case was  
22 that?

23 A With Call Points, Incorporated.

1 Q What year was that?

2 A '96, '97, somewhere along that line.

3 Q Just briefly, that is the class action lawsuit  
4 that was filed against your previous employer, Call  
5 Points, regarding allegations of discrimination;  
6 correct?

7 A Yes.

8 Q And I think I understand you were a class  
9 representative in that case?

10 A I was a named party. I don't know if that is  
11 the same thing or not.

12 Q So you were a named plaintiff in a class  
13 action lawsuit against Call Points; correct?

14 A Yes.

15 Q Do you remember whether that case was settled  
16 before a hearing on class certification?

17 A I don't know what that means.

18 Q Do you remember whether the court ever  
19 certified and agreed that there could be a class of  
20 people who could sue that company?

21 A I am sorry. Can you repeat that?

22 Q Do you know whether the court ever allowed a  
23 class of people to sue that company, or whether it was

1 just you named plaintiffs who ultimately were the only  
2 plaintiffs in the end?

3 A I don't know.

4 Q Do you know how many people got money in the  
5 settlement in the end?

6 A I can't say for sure.

7 Q I am not asking for sure. Do you know if  
8 anybody besides just you named plaintiffs got money?  
9 Not the specific number of people. Was it just you  
10 named plaintiffs that got money or was it people other  
11 than the named plaintiffs?

12 A I don't know.

13 Q When did you get a monetary settlement or a  
14 check in that lawsuit?

15 A In 1997, '98.

16 Q And you gave a deposition in that case?

17 A Yes.

18 Q Do you remember also giving a deposition in  
19 connection with the personnel case that DYS brought  
20 against Michael Hardy in connection with your  
21 allegations against him?

22 A That was a deposition?

23 Q Do you recall giving your testimony in that



1 case when there was a court reporter present, but not at  
2 the hearing?

3 I think we were at Mr. Stokes' office, but I'm not  
4 certain, downtown, at the education department.

5 A Yes.

6 Q I am pretty sure that was a deposition, too,  
7 but I am not testifying; you are.

8 A Oh, I am sorry. I thought I was just a  
9 witness.

10 Q You were a witness, but I think that you also  
11 gave your deposition on that date.

12 I am just trying to get an idea of the number of  
13 times that you have been deposed or given your testimony  
14 under oath, before here today.

15 Did you have any other times where you gave sworn  
16 testimony, in addition to those two depositions, that  
17 you can remember?

18 A No, I don't think so. Not to my knowledge.

19 Q Ms. McMillian, are you on any medication here  
20 today?

21 A Am I on medication?

22 Q Yes, ma'am.

23 A I took my medication this morning.

1 Q What medication did you take this morning?

2 A I took Lexapro.

3 Q Lexapro?

4 A Yes.

5 Q Anything else?

6 A A half a Xanax, blood pressure medication,  
7 Norvasc.

8 Q Norvasc?

9 A Norvasc.

10 Q Spell it. Does it start with an "N" or an  
11 "L"?

12 A N-O-R- -- I don't know.

13 Q Is there a "V" in there somewhere?

14 A Yeah, somewhere.

15 Q Okay. Anything else?

16 A No.

17 Q Does Lexapro have any side effects that you  
18 are aware of?

19 A I don't know.

20 Q Does it affect your memory?

21 A Does it affect my memory?

22 Q Yes, ma'am.

23 A No.

1 Q How about Xanax? Does that affect your  
2 memory?

3 A Not to my knowledge.

4 Q And the Norvasc, does that affect your memory?

5 A Not to my knowledge.

6 Q So is there anything else, as you are here  
7 today, that could be affecting your memory, making you  
8 not remember things, that you are aware of?

9 A No. Maybe lapsed time.

10 Q You do recall that there was a hearing before  
11 a hearing officer in the state personnel in which you  
12 testified under oath, and the result of it was that  
13 Michael Hardy's termination from this agency was upheld;  
14 correct?

15 A I know that now.

16 Q No. No. You do remember giving that  
17 testimony; right?

18 A Yes.

19 Q Is that something you had forgotten?

20 A No, I hadn't forgotten. I didn't know that  
21 that resulted in his termination.

22 Q That is not my question. What I was asking  
23 you was the number of times that you testified under

TERA MCMILLIAN - 1/22/2008

11

1 oath. And I understand that you have given a deposition  
2 in the case against Call Points, I know you gave a  
3 deposition to Mr. Stokes in the Hardy termination case,  
4 and then you testified at that hearing; right?

5 A Yes.

6 Q So that is three times.

7 Are there other times when you have given testimony  
8 under oath in a case, any case?

9 A Not to my knowledge, no.

10 Q Have you talked with anybody, other than your  
11 lawyer, about this lawsuit?

12 A Yes.

13 Q Okay. I want you to name for me each person.

14 A My mother.

15 Q Okay.

16 A I don't recall anyone else.

17 MR. WILSON: I am sorry. I couldn't hear the  
18 last answer.

19 THE WITNESS: I don't recall anyone else.

20 Q Have you talked with anybody else, not  
21 specifically about this lawsuit, but about the  
22 allegations that you have made that are the substance of  
23 this lawsuit?

1           A    That is possible, but I don't recall speaking  
2           with anyone else.

3           Q    You don't recall a single person?

4           A    About this lawsuit?

5           Q    About the allegations that you have made that  
6           are now the substance of this lawsuit?

7           A    Before the lawsuit was filed?

8           Q    No, ma'am. Before sitting here right now  
9           giving your deposition?

10          A    I can't recall.

11          Q    You can't recall anybody?

12          Who is Allen Staton?

13          A    He is the investigator.

14          Q    What investigator? He's the DYS investigator;  
15          right?

16          A    Yes, he is.

17          Q    You have talked with Mr. Staton about this,  
18          haven't you?

19          A    Yes.

20          Q    Have you forgotten that?

21          A    I thought you meant people in my --

22          Q    Okay. Who is Ms. Harris?

23          A    Veronica?

1 Q Yes.

2 A She works here at DYS. She is a friend of  
3 mine.

4 Q You and she grew up together?

5 A Yes.

6 Q And you have most certainly discussed some of  
7 these allegations with her, haven't you?

8 A Yes.

9 Q Have you forgotten that?

10 A No. I haven't forgotten Veronica.

11 Q My question is, I want to know who you talked  
12 with about the allegations in this lawsuit. You said  
13 you can't remember anybody. We have now covered two  
14 people.

15 Are there any other people?

16 A Ms. Spann.

17 Q Any others?

18 A Ingria Williams.

19 Q Who else?

20 A That's about all I can think of at the moment.

21 Q Is that everybody you have spoken with about  
22 this lawsuit or about the allegations that are the  
23 substance of this lawsuit, or not?

1 A Ms. Rankins.

2 Q Okay. Who else?

3 A Gerry.

4 Q I am not talking -- he works with your lawyer.

5 And I don't know if the privilege applies, but we assume  
6 it does.

7 A Okay.

8 Q Anybody else?

9 A Not that I can recall at the moment.

10 Q Who is Mr. Harvest?

11 A Mr. Harvest?

12 Q Do you know Mr. Harvest?

13 A I do.

14 Q Who is he?

15 A He works here at DYS.

16 Q Have you spoken with him?

17 A Yes.

18 Q Who is Mr. Farley?

19 A Mr. Farley, he used to work here.

20 Q Have you spoken with him?

21 A Not about this lawsuit.

22 Q Okay. I am not asking you about the lawsuit.

23 I am asking you about the allegations that you have made

1 in this lawsuit, the things that you say happened.

2 A Yes. I spoke with Mr. Farley.

3 Q Who else have you spoken with?

4 A I spoke with you.

5 Q Who else?

6 A My brother.

7 Q What is your brother's name?

8 A Kelvin Montgomery.

9 Q Where is Mr. Montgomery?

10 A He is in Wyoming.

11 Q I am sorry. Where?

12 A Wyoming.

13 Q You said his last name, and I didn't write it  
14 down.

15 A Montgomery.

16 Q Did you speak with him over the phone or in  
17 person?

18 A He came here last year in March, so in person.

19 Q Whom else have you spoken with?

20 A Roderick Cooks.

21 Q Roderick Cooks?

22 A (Witness nods head.)

23 Q Who else?



TERA MCMILLIAN - 1/22/2008

16

1 A My therapist.

2 Q And who is that therapist?

3 A I have spoke with my doctor, Dr. Carter.

4 Q What is the therapist's name?

5 A Gail Ellerbrake was the first person that I  
6 saw.

7 MR. JACOBS: Just to clarify things, it is  
8 Ellerbrake.

9 Q Ellerbrake. Where is Dr. Carter's office?

10 A Jackson Family Care.

11 Q In Montgomery?

12 A Yes.

13 Q And where is Gail Ellerbrake?

14 A She works at Catholic Social Services.

15 Q In Montgomery?

16 A Yes.

17 Q Whom else have you spoken with?

18 A Dr. Langlow.

19 Q Can you spell that?

20 A L-A-N-G-L-O-W, I think.

21 Q What kind of doctor is Dr. Langlow?

22 A Psychiatrist.

23 Q Anybody else? I am sorry. Where is Dr.

1 Langlow's office?

2 A Birmingham.

3 Q Whom else?

4 A The therapist and nurse that are at Meadhaven  
5 Hospital Program.

6 Q And that is here?

7 A I met them at the tower over behind Baptist  
8 South.

9 Q Here in Montgomery?

10 A Yes. On Normandie Drive.

11 Q I didn't understand you.

12 A On Normandie Drive.

13 Q Is that their office?

14 A That is where they hold the therapy sessions.

15 Q Where is their office? Do you know?

16 A That, I assume, is their office.

17 Q Do you know their names?

18 A Lucy.

19 Q Lucy?

20 A Yes.

21 Q Do you know the last name?

22 A No. And she was out one day and there was  
23 another lady. I'm not sure what her name was, but she

1 filled in for her.

2 Q How many times have you seen her?

3 A I was there every day for two weeks, I think.

4 Q When?

5 A In March of 2007.

6 Q March of '07?

7 A Yes.

8 Q With whom else have you spoken about the facts  
9 of this case?

10 A Dr. Dunn.

11 MR. WILSON: I am sorry. I couldn't hear the  
12 name.

13 THE WITNESS: Dr. Dunn.

14 Q D-U-N-N?

15 A Yes.

16 Q What kind of doctor is Dr. Dunn?

17 A He is a psychologist.

18 Q Where is he?

19 A Off of Mulberry. Fourth Street, I think.

20 Q Whom else?

21 A Stephanie, my counselor.

22 Q I am sorry. Stephanie who?

23 A Stephanie, my counselor. She works at Alabama

1     Psychiatric.

2           Q     Where?

3           A     Off of Carmichael.

4           Q     Whom else?

5           A     Stephanie just left, and I have a new  
6     counselor now. I can't think of what his name is.

7           Q     And you are continuing to talk about the  
8     allegations that you made in this case with these  
9     counselors, still today?

10          A     Yes. To a degree, yes. We talk about other  
11     things, too.

12          Q     Like what?

13                MR. JACOBS: I think that may be privileged,  
14                doctor-patient.

15                I think the other things that she  
16                talks to her therapist about other than  
17                the things related in this case may be  
18                privileged. I will be honest with you, I  
19                am not sure. I want to be safe here.

20                MR. PERRY: So you object on that basis?

21                MR. JACOBS: I would object on the  
22                doctor-patient privilege.

23          Q     You may answer the question.

1 A Relationships that I have with my son.

2 Q What else?

3 A My goals.

4 Q Goals like G-O-A-L-S?

5 A Yes.

6 Q In life?

7 A In life and also my mental health goals.

8 Q What else?

9 A Talk about ways of being able to handle  
10 stressful situations.

11 Q In general?

12 A Yes.

13 Q What else?

14 A What else?

15 Q What else?

16 A However I am feeling at that moment at that  
17 day.

18 Q Unrelated to the things you are saying in this  
19 case; right?

20 MR. JACOBS: I don't think she said that.

21 MR. PERRY: I am sorry. I am asking her.

22 MR. JACOBS: Well, I understand.

23 MR. PERRY: If you have an objection, please

1 object.

2 MR. JACOBS: I object to the form of the  
3 question. That is not what she said.

4 Q The things we are talking about, I am asking  
5 you about things that you talk about currently in your  
6 therapy sessions, other than things that are related to  
7 this case.

8 I understand your relationship with your son, your  
9 goals in life, your mental health goals, and methods  
10 generally of handling stress, and whatever you are  
11 dealing with or feeling at the moment, you will talk  
12 about that. Okay.

13 Are we together so far?

14 A Yes.

15 Q What other types of subjects are you seeing  
16 your therapist about now? And when I say "now,"  
17 recently is what I mean.

18 A Trust issues.

19 Q What else?

20 A I talk about how my medication is doing.

21 Q Anything else?

22 A Not that I can recall at this moment.

23 Q This is somewhat prying, I recognize that. I

1 want you to know that I am not asking these questions to  
2 be nosy or anything.

3 You understand that I represent the Department of  
4 Youth Services and you have filed this lawsuit against  
5 the Department of Youth Services and one of the things  
6 you have claimed is mental anguish and that is why I am  
7 asking you these questions, okay. I am not just prying.  
8 I wanted you to know that.

9 How old is your son?

10 A He is seven.

11 Q How is he?

12 A How is he?

13 Q Yes.

14 A He is fine.

15 Q How is your relationship with him?

16 A We have a good relationship.

17 Q What about your relationship with your son  
18 would prompt you to seek counseling?

19 A What about my relationship with my son that --

20 Q -- prompted you to seek counseling about that  
21 relationship with your son?

22 A My relationship with my son didn't prompt me  
23 to seek counseling.

1 Q Maybe I misunderstood. I thought you said one  
2 of the things that you talk about with your counselor  
3 currently is your relationship with your son.

4 A Yes. But that is not what prompted me into  
5 counseling.

6 Q I didn't ask you what prompted you into  
7 counseling.

8 Why are you getting professional counseling  
9 regarding your relationship with your son, is all I am  
10 asking?

11 A It is all-around counseling.

12 Q What does that mean?

13 A I talk about my entire life.

14 Q What stress do you talk about ways to handle?

15 A What stress do I talk about ways to handle?

16 Q Yes.

17 A What do you mean "what stress"?

18 Q One of the things that you said you talk about  
19 with your counselors currently, not related to this  
20 lawsuit, is ways to handle stress. At least, that is  
21 what my notes say. That may not be exactly your words.

22 But do you remember saying that one of the things  
23 y'all talk about is ways to handle stress?



1 A Yes.

2 Q What stress are you talking about handling?

3 A All types of stress.

4 Q Tell me about it.

5 A Stress from work, stress from home.

6 Q Anything else?

7 A At this moment, I can't think of anything  
8 else.

9 Q Are you still working two jobs?

10 A No, sir.

11 Q When did you stop working at Hanilehwa?  
12 Would you spell that?

13 A H-A-N-I-L-E-H-W-A.

14 Q That is a second tier Hyundai supplier; is  
15 that correct?

16 A I don't know what tier it is, but it is a  
17 supplier.

18 Q And you worked over at the Hyundai plant;  
19 correct?

20 A I did.

21 Q When did you stop working at that job?

22 MR. JACOBS: Sorry. Which job?

23 MR. PERRY: Hanilehwa.

1 A I think it was 2006. I'm not sure.

2 Q Why did you stop that job?

3 A Because I wasn't spending enough time with my  
4 son.

5 Q You were working long hours. You would leave  
6 this job at six in the morning, right, and you would  
7 start that other job at six-thirty in Hope Hull?

8 A Yes.

9 Q How long did you do that?

10 A About eight months, I think. I'm not sure.

11 Q And you did that because you wanted to do  
12 that; right?

13 A I did that to help take care of my son.

14 Q Do you remember saying that you did that  
15 because you wanted to?

16 A Yes.

17 Q Which is true?

18 A Both.

19 Q You wanted to do it to help take care of your  
20 son?

21 A Yes.

22 Q I understand.

23 Trust issues, tell me about that. What trust

1 issues do you have for which you are getting  
2 professional counseling?

3 MR. JACOBS: That are related to the case?

4 MR. PERRY: No.

5 A I do not trust easily.

6 Q I know I am prying, and I apologize. Tell me  
7 about that, if you can.

8 A You want to know why it is hard for me to  
9 trust?

10 Q Not exactly. As I understand it, I really  
11 don't want to get into too much detail about your  
12 personal issues, but I need to know maybe just generally  
13 what you are talking about when you say "trust issues"  
14 that you have. I mean, just generally.

15 A Things have happened to make me feel that way.

16 Q At what point in your life are we talking?

17 Are we going back to childhood? I don't want to  
18 pry about the details. Are we talking childhood?

19 A There has been instances.

20 Q You also talked about your current medication.

21 Who is managing your medication currently? Do you have  
22 a psychologist?

23 A Psychiatrist. Dr. Poff.

1 Q Spell that.

2 A P-O-F-F.

3 Q Where is he?

4 A He is at Alabama Psychiatric Associates, and  
5 my medical doctor.

6 Q I kind of got off track. Let me go back to  
7 where we got off on the therapists. You listed several  
8 people you have spoken with about the substance of this  
9 case and I want to get back to the case now.

10 I know you have spoken with Mr. Staton, and I  
11 believe those were recorded statements that you gave;  
12 right?

13 A Yes, I believe they were.

14 Q And you told him the truth; correct?

15 A Yes, sir, to the best of my knowledge.

16 Q You have spoken with Ms. Harris?

17 A Yes.

18 Q When was the last time you have talked with  
19 Ms. Harris about the allegations in this case?

20 A It's been a while. I can't recall when.

21 Q Give me a ballpark. A while, does that mean  
22 several days or does that mean years?

23 Have you talked with her since the lawsuit was

1 actually filed?

2 A Yes. I have spoken with Ms. Harris.

3 Q Tell me the last time y'all talked that you  
4 remember.

5 A We talked the night before last.

6 Q What did y'all talk about?

7 A A friend of ours was killed at the racetrack.

8 Q I am sorry. I asked the wrong question. You  
9 answered the question I asked. I didn't intend to ask  
10 you what y'all talked about, generally.

11 When was the last time you remember talking with  
12 her about the allegations in this case?

13 A I don't recall the date.

14 Q I do not need a definite date. I need an idea  
15 whether it was recent or years ago.

16 A No, it hasn't been years ago, but I don't  
17 remember.

18 Q What did y'all talk about, whenever it was?

19 A What did we talk about? You.

20 Q You talked about me? I am afraid to ask.

21 MR. JACOBS: You might be.

22 Q Tell me about it. What was your conversation  
23 with her about me?

1           A    I think we were both shocked to know that you  
2    came and prepped me for the hearing and now you are on  
3    the other side of the table.

4           Q    Anything else?

5           A    I am under oath. I told her that you said you  
6    were my friend.

7           Q    Anything else?

8           A    And that I didn't know if you were my friend  
9    now.

10          Q    Let's just chat a minute, okay.

11          A    Okay.

12          Q    I prepped you for that hearing in connection  
13   with Michael Hardy, didn't I?

14          A    Yes.

15          Q    Do you remember what time we did that?

16          A    I think it was on a Saturday night.

17          Q    It was two o'clock in the morning, wasn't it?

18          A    When you came there?

19          Q    When we started, we started at two o'clock in  
20   the morning, didn't we?

21          A    No.

22          Q    What time do you remember we started?

23          A    I got to work at ten.

1 Q Maybe we ended at two.

2 A Yes.

3 Q I remember it was two in the morning. So you  
4 didn't have to take any additional time; you were able  
5 to do that while you were working; right?

6 A Yes.

7 Q You presented to the hearing officer in that  
8 case your allegations about what you had said Mr. Hardy  
9 had done to you, didn't you?

10 A Yes.

11 Q And what happened as a result of that?  
12 Michael Hardy lost his job, didn't he?

13 A He did.

14 Q And if I understand, you and Ms. Harris  
15 discussed whether I continue to be your friend because  
16 now I am defending the agency because you are claiming  
17 the agency owes you money now. Am I understanding that  
18 correctly?

19 A That they owe me money?

20 Q This is a civil lawsuit. Am I correct in  
21 assuming that you are filing this civil lawsuit because  
22 you want money?

23 A Compensation, also vindication.

1 Q That means money, doesn't it?

2 A Yes.

3 Q And you are suing DYS; right?

4 A Yes.

5 Q So I correctly understand that, don't I?

6 A I don't know if you understand it.

7 Q Anything else that you spoke with Ms. Harris  
8 about this lawsuit or your claims in this lawsuit?

9 A I don't know. We talk quite a bit.

10 Q Well, I know, and my question is, in  
11 connection with this lawsuit or the allegations in this  
12 lawsuit, what else did y'all talk about? I know y'all  
13 talked about me, and we covered that. Did we cover it  
14 all? Do you understand my question?

15 A Did we cover it all?

16 Q Regarding your discussions with Ms. Harris  
17 about me, did we cover that?

18 One of the things that I should have done -- and I  
19 apologize -- when we started, I should have told you  
20 that any time you need to take a break, you let me know  
21 and we will break.

22 Do you need to take a break now? That is fine.

23 Now, it's not to go and talk about your testimony,



1 but if you need to take a break or something, that's  
2 fine.

3 A You said talk about it. Talk about with who?

4 Q With anybody. I don't want you to go and talk  
5 about questions I have asked and then come back. I want  
6 you to answer my questions. But if you need to take a  
7 break, we definitely can take a break.

8 A We can take a break. That is fine.

9 Q We will do that. Let me finish this one  
10 question and then we will break.

11 Did we cover all of your discussions with Ms.  
12 Harris about me?

13 A As far as I can recall at this moment.

14 Q But you have also talked with Ms. Harris about  
15 some other things. So let's take a break and we will  
16 come back and finish that.

17 (Thereupon, a lunch break was taken.)

18 Q Ms. McMillian, how do you spell your last  
19 name?

20 A M-C-M-I-L-L-I-A-N.

21 MR. JACOBS: I have got it wrong on the style  
22 of the case, and that is what I was  
23 saying earlier. At some point, I

1                   concluded I had it right and everybody  
2                   else had it wrong.

3           Q    Ms. McMillian, we were talking about different  
4   conversations you have had about the facts that are in  
5   this case, and we were talking specifically about Ms.  
6   Harris. And what I want to know is what else you have  
7   talked to Ms. Harris about, other than what we have  
8   covered this morning, regarding this case.

9           A    Since this lawsuit was filed?

10          Q    Well, both since and before. Basically, I  
11   need to know what all you have talked with her about.

12          A    After Mr. Hardy left my home, we talked about  
13   that. I had also told her some of the things that he  
14   had said and done previous to that.

15          Q    What else?

16          A    I can't recall anything else at this moment.

17          Q    What did you tell Ms. Harris that Mr. Hardy  
18   had done?

19          A    I told her that he had been making advances.

20          Q    Let me ask you this: Did you tell her that he  
21   had done anything that you didn't testify to in Michael  
22   Hardy's personnel case?

23          A    I don't recall.

1 Q Well, why don't you recall?

2 A It's been a while ago.

3 Q Let me short-cut it then.

4 Is there anything you didn't testify to in his  
5 personnel case that you might have told her?

6 A I don't know, sir.

7 Q Do you understand what I am asking?

8 A Would you like to clarify more?

9 Q Nope. I want to make sure you understand what  
10 I am asking. I need to communicate. I need to make  
11 sure that we are on the same page.

12 Do you understand the question I am asking, is what  
13 I am saying?

14 A You are asking me if I spoke to her about  
15 anything different that was said at his administrative  
16 hearing?

17 Q Close enough, yes. Not necessarily different,  
18 but that I didn't previously know.

19 A That you didn't previously know?

20 Q Right. That is what I am trying to get at. I  
21 know what you testified to. But I am asking if you  
22 talked to Ms. Harris about things other than what you  
23 have already testified to.

1           A    I don't know. I don't know if I talked to her  
2    about anything different. I can't recall that.

3           Q    Was that even possible?

4           A    Was it even possible?

5           Q    Yes. Is it possible that there are things  
6    that you have talked with people about regarding what  
7    Michael Hardy did that you haven't previously testified  
8    to?

9           A    Not to my knowledge. I don't recall that, no.

10          Q    You said that you spoke with Ingria Williams?

11          A    Yes.

12          Q    When did you speak with Ingria about the facts  
13   that are part of this lawsuit?

14          A    While the advances were happening.

15          Q    Okay. Have you spoken to her since then?

16          A    I spoke to her the night before last.

17          Q    Okay. What did y'all talk about?

18          A    She is in Birmingham having a surgical  
19   procedure done.

20          Q    I did it again.

21                Have you spoken to her since then about the facts  
22   that are in this lawsuit, that relate to this lawsuit?

23          A    Since his advances? Since his last advance?

1 Q Yes. In other words, if I understood your  
2 first answer, you spoke to her while Michael Hardy was  
3 still working here and while the facts which were the  
4 subject of this case were taking place.

5 And my question is: Since that happened, and let's  
6 say since you have moved out from under Michael Hardy's  
7 supervision, have you spoken to Ingria Williams about  
8 the facts of this case?

9 A Pertaining to Michael Hardy?

10 Q Anything in this case.

11 A Yes.

12 Q Tell me about those discussions.

13 A We were just having general conversations.  
14 She would ask how things were going, and I would tell  
15 her.

16 Q What things?

17 A In the dorm that I was in, ITU.

18 Q What does that have to do with this case?

19 I am not saying it doesn't. That is a question.

20 A What does it have to do with this case?

21 Q How did that relate to this case?

22 A I was just answering your question. You said  
23 did I talk with her about anything else.

1 Q I am not arguing. I understand.

2 Are you telling me that how things are going in  
3 your dorm at any particular time necessarily relates to  
4 this case?

5 A Yes.

6 Q Explain that.

7 A The way I was being treated at the dorm.

8 Q By whom?

9 A The unit manager and co-workers.

10 Q And the unit manager is whom?

11 A At this time?

12 Q Well, at that time, whatever you talked with  
13 Ms. Williams about.

14 A I know that I spoke to her about Mr. Lee.

15 MR. WILSON: I am sorry. Mr. who?

16 THE WITNESS: Sylvesta Lee.

17 Q And, specifically, you have alleged that Mr.  
18 Lee has retaliated against you because you made an  
19 allegation against Michael Hardy; am I correct?

20 A Yes.

21 Q That is your allegation; right?

22 A Yes.

23 Q And you spoke with Ingria Williams about that;

1 correct?

2 A I have spoken with her about that.

3 Q What else have you spoken with her about?

4 A That the Lord will let the truth come out.

5 Q What else?

6 A I don't recall anything else at this moment.

7 Q Tell me, as specifically as you can regarding  
8 Mr. Lee, what you said to Ingria Williams about how you  
9 were being treated at that time.

10 What did you tell Ingria?

11 A That I felt like he was treating me  
12 differently than other staff.

13 Q What did she say?

14 A What did she say?

15 Q Yes.

16 A I don't recall right off. I am sorry.

17 Q How many of those kinds of discussions about  
18 the facts of this case have you had with Ms. Williams?

19 A I'm not exactly sure.

20 Q More than one?

21 A Yes.

22 Q More than ten?

23 A I don't know. I don't know.

1 Q Is that possible?

2 A No.

3 Q Less than ten?

4 A Probably so. That would probably be a better  
5 answer.

6 Q Less than ten would be a better answer?

7 A Yes.

8 Q So on ten occasions you have said that you  
9 think Mr. Lee is treating you different from other  
10 people?

11 A Ten times to Ingria?

12 Q Yes.

13 A I'm not exactly sure.

14 Q What did you say on the other occasions?

15 A When I talked to her, we not only talked about  
16 that. We talked about other things, too. So I can't  
17 say for sure. I am sorry.

18 Q You understand I am only asking you about  
19 discussions you have had with Ingria about the facts  
20 related to this case; right?

21 A Okay.

22 Q That is all I'm asking you about.

23 So you think you have had ten discussions with her



1 but you don't remember what you said other than that?

2 A I said I wouldn't say more than ten.

3 Q Something less than ten?

4 A Probably.

5 Q More than five?

6 A I can't say that for sure.

7 Q Ms. Rankins, have you talked with Ms. Rankins  
8 after you made the initial complaint to her on the date  
9 that this all started?

10 A I have.

11 Q How many times?

12 A I can think of once that I talked with her.

13 Q Only once?

14 A I'm not sure. Maybe twice.

15 Q Tell me what y'all talked about, about this  
16 case.

17 A My mother was ill. I called Mr. Lee to let  
18 him know that.

19 Q That is the incident that you wanted to not  
20 have to come in to work because your mother was ill?

21 A I was already at work.

22 Q Any other discussions with her?

23 A I think with Mr. Bolling, who was also the

1 unit manager before Mr. Lee. I talked with Ms. Rankins  
2 because my doctor had advised me not to go to work that  
3 night, and I spoke with her about that.

4 Q About not coming in?

5 A Yes.

6 Q She is Mr. Lee's supervisor?

7 A She was.

8 Q Was, right.

9 She is retired now; right?

10 A Yes.

11 Q Have you talked with Mr. Farley since Mr.  
12 Farley left and went to Birmingham?

13 A No.

14 Q Roderick Cooks, when did y'all talk about this  
15 case or the facts about this case?

16 A During the time he represented me.

17 Q That's right. He is a lawyer?

18 A Yes.

19 Q When was the time period that he represented  
20 you?

21 A 2005.

22 Q Until when?

23 About two weeks after you -- You hired him about

1 two weeks after you went to see Ms. Rankins and she sent  
2 you to Debra Spann; is that right?

3 A It was June 16th, I think.

4 Q Maybe the 12th, maybe the 16th, somewhere  
5 around there?

6 A Excuse me?

7 Q You hired him somewhere around the 12th  
8 through the 16th, right, of July?

9 A I think it may have been before then that I  
10 spoke with him. Maybe my mother spoke with him first.

11 Q When did that happen?

12 A When she spoke with him?

13 Q Yes.

14 A I can't recall a date. I am sorry.

15 Q What month?

16 A It might have been July.

17 Q Could it have been June?

18 A No.

19 Q It was in July?

20 A I think so.

21 Q And then how long did he represent you? When  
22 did he no longer represent you?

23 A Sometime in 2006.

1 Q Fall, spring, winter, or summer?

2 A It wasn't winter.

3 Q Before or after winter?

4 A Before.

5 Q Was there a period where you were  
6 unrepresented?

7 A Yes.

8 Q How long?

9 A I don't know.

10 Q All right. Let's go back to your therapy and  
11 your current treatment.

12 Were you an in-patient program at Meadhaven?

13 A No. I was in the partial hospital program.

14 Q The what now?

15 A The partial hospital program.

16 Q When did you first begin seeing a  
17 psychiatrist?

18 A Psychiatrist?

19 Q Yes.

20 A I think it was in 2003.

21 Q Had you seen psychologists and/or counsellors  
22 or other mental health professionals before then?

23 A I think once when I was about twelve.

1 Q In 2003, who did you see?

2 A Dr. Carter had referred me to Dottie Skipper,  
3 but I didn't see her because I couldn't afford to see  
4 her. I let her know that that wasn't going to be  
5 possible, and she referred me to the Catholic Services.

6 Q What was going on at that time for which you  
7 were seeking professional mental health counseling?

8 A The situation with Mr. Hardy.

9 Q In 2003? Is that right?

10 A Yes.

11 Q When in 2003 did you see a mental health  
12 professional?

13 A I am not exactly sure what date that was.

14 Q Fall, winter, spring, or summer?

15 A Probably after I had gone to Dr. Carter is  
16 when I went to see the therapist at Catholic Services.

17 Q Which had been in the fall, Dr. Carter?

18 A I don't know.

19 Q I think you said it was not the winter; it was  
20 before the winter? Am I remembering that right?

21 A Did I say it was before winter?

22 Q Is that what you said earlier?

23 You want the court reporter to look back? Do you

1 need the court reporter to look back and tell whether  
2 you had first seen him in the winter or before? You  
3 don't remember what you just testified to regarding that  
4 time line?

5 A I wanted to be correct.

6 Q I do, too. But I don't understand why you  
7 can't get it correct without having her read it back.

8 Do you think you might have been seeing a mental  
9 health professional about Michael Hardy in the winter of  
10 '03 or before? Is that your testimony?

11 A Yes.

12 Q Have you ever received a mental health  
13 diagnosis?

14 A Yes.

15 Q Tell me what your diagnosis is.

16 A Major depression.

17 Q Major depression?

18 A Yes.

19 Q When you were at Meadhaven, were you there for  
20 that diagnosis?

21 A That is when I received the diagnosis.

22 Q Let's talk about your work history, and we are  
23 just going to talk about DYS.

1           When you first came to DYS, were you assigned to  
2       Holloway Hall?

3           A    Yes, sir.

4           Q    What time frame? Well, first of all, after  
5       you worked at Holloway, you then went to Paige Hall?

6           A    Yes.

7           Q    And then you left Paige Hall and went to ITU;  
8       correct?

9           A    Yes. I think I was at the Trustees Hall.

10          Q    So you were there for one day or some short  
11       period of time?

12          A    Yes.

13          Q    And those are the three dorms you have worked  
14       in at DYS, and no others; correct?

15          A    I did Hold Dorm.

16          Q    Which is like a temporary assignment?

17          A    Yes.

18          Q    You started Holloway in 2002?

19          A    Yes.

20          Q    If I understand it correctly, the staff that  
21       you worked with at Holloway were given the option of  
22       transferring as a group to Paige Hall; correct?

23          A    I don't know about given an option.

1 Q But it is correct that y'all moved as a group?

2 A Yes.

3 Q And not everybody moved, one or two people  
4 stayed behind; right?

5 A I think they traded out Mr. Dortch for Mr.  
6 Goshay.

7 Q When did that take place?

8 A I'm not exactly sure. Probably 2004.

9 Q 2004. That did not happen in '03?

10 A I'm not sure.

11 Q In '03, you worked at Holloway Hall; right?

12 MR. JACOBS: Can we go off the record for a  
13 minute?

14 (Thereupon, an off-the-record  
15 discussion was held.)

16 Q Ms. McMillian, isn't it true that you had no  
17 problems with Mr. Hardy during the time you worked at  
18 Holloway Hall; correct?

19 A Not the same type of issues, no.

20 Q What do you mean?

21 A He would call me into his office quite  
22 frequently.

23 Q He would call you in his office for what?



1 A To talk.

2 Q And you would go in and talk with him?

3 A Yes.

4 Q So the first time that he did something to you  
5 that was sexually inappropriate was at Paige Hall, isn't  
6 that true?

7 A Yes.

8 Q The only person that you claim in this case  
9 that has acted in a way that was sexually inappropriate  
10 towards you is Michael Hardy; correct?

11 A Directly towards me, yes.

12 Q Are you implying that you are claiming that  
13 some basis of your claim is indirect treatment to you by  
14 someone else?

15 A There was joking and things of that nature,  
16 but it was never directed towards me, personally.

17 Q I know there was joking, and you actually  
18 participated in that joking?

19 A To some degree.

20 Q That is not what I am asking. I am asking  
21 about the basis of this lawsuit. It is not a trick  
22 question. I am trying to make sure that I am correct in  
23 my understanding that Michael Hardy is the only person

1 that you are suing my client, DYS, for having sexually  
2 inappropriately mistreated you?

3 A Yes.

4 Q You have claimed that lots of people have  
5 mistreated you, and we will get to that.

6 Do I correctly understand that your claim is that  
7 everything else that has happened has happened because  
8 of Michael Hardy?

9 A As a result of the situation that transpired,  
10 yes.

11 Q What do you mean by that, as a result of the  
12 situation that transpired?

13 A What do I mean by that?

14 Q Yes, ma'am. Explain what you mean.

15 A The fact that they probably knew him better  
16 and longer than me, and I am sure that they probably  
17 believed some things that he was saying.

18 Q I didn't hear the first thing that you said.  
19 Something longer than you?

20 A Probably because they knew him.

21 Q They knew Hardy longer than they knew you and  
22 they believed Hardy? Did I understand that correctly?

23 A Some of them, I am sure.

1 Q Let's do it this way. Tell me who you claim  
2 has discriminated against you, period?

3 A My co-workers.

4 Q Your co-workers?

5 A Yes.

6 Q All of your co-workers?

7 A I have never heard anything. The majority of  
8 them. My supervisors.

9 Q All of your supervisors?

10 A Mr. Bolling, Mr. Lee.

11 Q Any other supervisors besides Bolling and Lee?

12 A Those were my supervisors.

13 Q Who else?

14 A Because of Mr. Hardy, correct, or because of  
15 this?

16 Q I am asking you why you are suing DYS. I want  
17 to know who you are claiming has discriminated against  
18 you.

19 A Co-workers, the supervisors.

20 Q And your supervisors are Bolling and Lee?

21 A Yes.

22 Q No other supervisors; right?

23 A Those are the supervisors that I had.

1 Q And you are not talking about Phyllis Rankins?

2 A No.

3 Q And you are not talking about Debra Spann?

4 A No.

5 Q You are talking about your direct immediate  
6 supervisors? That is a question.

7 A Yes, I know.

8 Q Am I correct? It is not a trick question.

9 A I didn't think it was. I am just thinking.  
10 You said because of Michael Hardy?

11 Q I think you said because of Michael Hardy, and  
12 I think I understand -- if I am wrong, you tell me --  
13 that the basis of this lawsuit is what Michael Hardy did  
14 and what your co-workers and your supervisors did  
15 because of you telling on Michael Hardy?

16 A Okay.

17 Q Right?

18 A Yes.

19 Q And now I am trying to find out who we are  
20 talking about. I think I know, but if I file stuff,  
21 your lawyer is going to say, no, you have got to have a  
22 record of this. So I am trying to get it on paper.

23 I think I understand you are talking about your two

1 immediate supervisors and your co-workers; right?

2 A Yes.

3 Q And you are not talking about other employees  
4 or people in the supervisory chain other than those two  
5 people? Is that right?

6 A As far as I know.

7 Q Now, let's talk about who the co-workers are.  
8 Who are they? Who are you talking about?

9 A When I first got to the dorm, Ms. Hall was not  
10 very nice.

11 Q Ms. who?

12 A Vanessa Hall. I asked her to help me fill out  
13 some paperwork. She told me she didn't know how to do  
14 it.

15 Q Has she done anything since then?

16 A She has said things.

17 Q What?

18 A Something to the fact that every time she  
19 turns around, they are sending people who are crazy to  
20 ITU.

21 As I said, she didn't say my name even though she  
22 was looking at me.

23 MR. WILSON: I am sorry. I couldn't hear that

1 last answer. Would you repeat what you  
2 said?

3 THE WITNESS: I said that she said every time  
4 it seems like she turns around, they are  
5 sending crazy people to ITU.

6 Q Who told you that she said that?

7 A I was there when she said it.

8 Q And you perceived, even though she didn't say  
9 your name, that she was talking about you?

10 A I was the last person to come in there, and  
11 she was looking at me.

12 Q So the answer is that, yes, you did perceive  
13 that she was talking about you?

14 A Yes.

15 Q She was looking at you, but she didn't say  
16 your name?

17 A Yes.

18 Q When did that happen? When you first went to  
19 ITU?

20 A Yes.

21 Q So she said you are crazy, essentially; am I  
22 right?

23 A I took it that way.

1 Q What basis would she have for saying that?

2 A She said something earlier about the fact that  
3 I had taken stress leave.

4 Q This was earlier?

5 A In 2005.

6 Q Anything else that she did or said?

7 A She would come in and not speak, but that was,  
8 you know, her prerogative.

9 Q I am sorry. She would come in and not speak?

10 A Yes, but that was her right.

11 Q Anything else?

12 A Slam doors.

13 Q I am sorry?

14 A Slam doors.

15 Q In ITU?

16 A Yes.

17 Q What doors?

18 A The door to the control room.

19 Q The door that goes "Bam" every time it closes?

20 A You are talking about 41, that door does that,  
21 and that third door to the front does that, also.

22 Q So those are the doors you are saying she  
23 slammed?

1 A No.

2 Q What doors was she slamming?

3 A 41, the one to the control room.

4 Q That door doesn't have one of those big locks  
5 on it?

6 A Does it have a big lock on it?

7 Q Yes. Those big locks? Every time I go in  
8 there, I hear those locks. They slam shut with a loud  
9 noise.

10 A They don't have to slam shut with a loud noise  
11 unless you allow them to.

12 Q I guess I haven't learned that art. Anything  
13 else?

14 A Not that I can think of at this moment.

15 Q What other co-workers are you talking about?

16 A Ms. Whitted was upset with me.

17 Q Ms. who?

18 A Ms. Whitted. I didn't know why.

19 Q W-H-I-T-T-E-D?

20 A Yes.

21 Q How do you know she was upset?

22 A She told another co-worker.

23 Q Did you hear her tell this co-worker?



1 A No.

2 Q How did you know that she told her co-workers?

3 A Because he told me.

4 Q Who is he?

5 A Mr. Webster.

6 Q Mr. Webster?

7 A Yes.

8 Q What did Mr. Webster say she said?

9 A That she was upset with the administration  
10 more so after she realized that it wasn't I who had  
11 taken her slot; that they had taken it from her.

12 Q So she was upset that you got her slot?

13 A Yes.

14 Q Anything else?

15 A I think she was upset about her off days.

16 Q What do you mean?

17 A When I was transferred there, when I got her  
18 slot, I also received her off days.

19 Q You got Whitted's off days?

20 A Yes.

21 Q And Whitted was upset about that?

22 A Yes.

23 Q Anything else?

1 A Not that I can think of at this moment.

2 Q So as far as you know, those are the reasons  
3 that Ms. Whitted was upset with you?

4 A I have an idea, but that is what -- that is  
5 one of the things that Mr. Webster had told me.

6 Q That is what Mr. Webster told you she had said  
7 she was upset about?

8 A Yes.

9 Q And you don't have any reason to doubt Mr.  
10 Webster, you are saying?

11 A Who? Me?

12 Q Yes.

13 A Do I have any reason to doubt him?

14 Q Right.

15 A He is human.

16 Q So that could be wrong, as far as you know?

17 A That is possible.

18 Q Vanessa Hall -- let me go back -- what was she  
19 upset about? Why was she saying these comments that, I  
20 suppose, hurt your feelings?

21 A I don't know.

22 Q What does she know about or why do you think  
23 she might have known -- well, I guess you may have

1 answered this -- that you took stress leave at one  
2 point?

3 A I don't know how she would have known that. I  
4 didn't tell her that.

5 Q Okay. You just think that she understood that  
6 you were out on stress leave?

7 A No. I don't know what she understood.

8 Q Well, you said she said something about you  
9 taking stress leave?

10 A She said that.

11 Q And you had, in fact, I think you said,  
12 previously taken some time off on what you call "stress  
13 leave"?

14 A I had.

15 Q And so do you have any reason to believe that  
16 that is not what she was upset about?

17 A That that is what she was upset about?

18 Q No. Have you got any reason to believe that  
19 it was something else that she was upset about?

20 A I don't know what she was upset about, because  
21 I didn't know her.

22 Q What other co-workers?

23 A Ms. Griner.

1 Q Spell that.

2 A G-R-I-N-E-R. I didn't know her either. So I  
3 don't know.

4 Q What did she do to you?

5 A She and Ms. Whitted opened my paycheck stub.

6 Q When?

7 A I think it was August 19th.

8 Q What year?

9 A 2005.

10 Q That offended you?

11 A Yes.

12 Q What else did Ms. Griner do that offended you?

13 A Ms. Griner rolls her eyes, and she comes in  
14 and she will say, "Good morning, Mr. Webster," and the  
15 two of us are sitting there.

16 That is her right, also.

17 Q In other words, you and Mr. Webster will be  
18 there together, and she will come in and speak to Mr.  
19 Webster but won't speak to you?

20 A Yes.

21 Q Am I understanding correctly?

22 A Yes, but that is her right.

23 Q This happened when?

1 A All the time.

2 Q Still?

3 A Sometimes.

4 Q Now, I think I understand that at some point  
5 your problems with your co-workers ended; am I not  
6 right?

7 A I learned to deal with it.

8 Q I did not ask you if you learned to deal with  
9 it. I think I understand that you had previously said  
10 that your co-workers had stopped --

11 A That things were getting better.

12 Q Yes. That they had stopped mistreating you;  
13 Is that not correct?

14 A That things were getting better.

15 Q So is your testimony here today that your  
16 co-workers didn't stop mistreating you? Is that your  
17 testimony here under oath today?

18 A That things were getting better.

19 Q So what is the answer to my question?

20 A The answer to your question?

21 Q Right. Is it your testimony here today under  
22 oath that your co-workers never did stop mistreating  
23 you?

1           A    Totally, no. I don't think so, totally. But  
2 things got a lot better.

3           Q    When?

4           A    Lately.

5           MR. PERRY: Let the record reflect that the  
6                    Plaintiff is having a conference with her  
7                    counsel.

8           Q    By the way, the same rule applies. If you  
9 need to take a break, let us know.

10          No need to be any more miserable than we all have  
11 to be.

12          So we have covered all Whitted and Ms. Griner.  
13          Ms. Griner opened your paycheck in August of '05?

14          A    She and Ms. Whitted together.

15          Q    Rolls her eyes at you and frequently won't  
16 speak to you?

17          A    Yes, but that is okay.

18          Q    That's okay with you?

19          A    That's her right.

20          Q    Do you think she does not like you?

21          A    No, I don't think so. Not very much, no.

22          Q    I am sorry.

23          So you think she does not like you very much; is

1 that what you said?

2 A No, she doesn't.

3 Q No, she does not like you very much?

4 A No.

5 Q Y'all just have a personality conflict?

6 A I wouldn't think so.

7 Q You do or don't?

8 A I don't think so. We have never had any type  
9 conversations.

10 Q Well, why do you think she dislikes you?

11 A I don't know. It would be good if you would  
12 ask her, but I don't know.

13 Q Do you have anything at all to suggest a  
14 reason why she would dislike you?

15 A I know she had to go to Paige Hall, also.

16 Q Had to go to Paige?

17 A She was working at Paige, also. I know she  
18 didn't like that.

19 Q When did she have to go to Paige?

20 A When I first went to ITU.

21 Q When you went to ITU, she had to be moved to  
22 make room for you?

23 A I don't know about making room for me, but she

1 did.

2 Q Did she come back to ITU?

3 A She did.

4 Q And when she came back to ITU, y'all switched  
5 days off, didn't you?

6 A Ms. Griner?

7 Q Is that not right? Am I confusing that?

8 A Ms. Whitted.

9 Q So it was Ms. Whitted. So Griner and Whitted  
10 both left ITU when you went?

11 A I think it was not at the same time. I don't  
12 know who went first.

13 Q And then they both came back?

14 A They did.

15 Q And so you think it likely that she was put  
16 out because she was moved around to accommodate you?

17 A To accommodate me?

18 Q Yes.

19 A I don't know if it was to accommodate me,  
20 because there was probably space for all of us there.

21 There is always a shortage.

22 Q Well, do you have any other ideas why  
23 Ms. Griner might dislike you?



1 A I don't know.

2 Q No idea on earth?

3 A No.

4 Q What other co-worker?

5 A Mr. Dortch.

6 Q How do you spell his name? Do you know?

7 A D-O-R-T-C-H.

8 Q First of all, what did Mr. Dortch do to you?

9 A He had a petition going around. I didn't see  
10 it. I don't know what it said. But I spoke with Ms.  
11 Spann about it. He had one going around on her, too.

12 Q When was this petition going around? Is this  
13 the one that was introduced at the Michael Hardy hearing  
14 that you had never seen at that time?

15 A I don't know. I never saw it.

16 Q How do you know about a petition?

17 A Because he was asking people on campus to sign  
18 it.

19 Q How do you know that?

20 A Because someone told me.

21 Q Who told me?

22 A I think it might have been Ms. Harris. I'm  
23 not for sure, because I think everybody knew about it.

1 Q Everybody knew about it?

2 A The petition.

3 Q When was this?

4 A I think it was in 2005. I'm not sure.

5 Q Was this before or after Mr. Hardy was  
6 terminated?

7 A I didn't know that Mr. Hardy was terminated.

8 Q Was it before or after the hearing?

9 A I'm not sure. I think it was before. I'm not  
10 sure. I'm not sure.

11 But I told Ms. Spann about it. I don't know if she  
12 took notes on it. She may know.

13 Q You remember at the hearing that there was a  
14 petition that was signed by certain of your co-workers,  
15 and I showed you that at that hearing?

16 A A letter, yes.

17 Q And there were two versions of the thing that  
18 had different signatures on the bottom?

19 A Yes.

20 Q Is that the petition you are talking about?

21 A I don't know. I don't know. I never saw the  
22 petition.

23 Q Is it more than one that you are talking

1 about? Is it a single petition or is there a petition  
2 other than the one you saw at that time?

3 A If that is the one that you said was the  
4 petition, then I assume it is.

5 Q I didn't say anything. I am trying to find  
6 out the facts.

7 A I never saw the original petition, so I don't  
8 know.

9 Q So as far as you know, there was one petition;  
10 right? There was only one incident, one time, that that  
11 happened?

12 A He had one for me and one for Ms. Spann.

13 Q You think he had one going on about Ms. Spann,  
14 too?

15 A Yes. She knows about it.

16 Q Not that she knows about it. You think there  
17 was a petition that said something about Ms. Spann?

18 A Yes.

19 MR. JACOBS: Let's take a break.

20 (Thereupon, a break was taken.)

21 Q I want to show you two documents. They are  
22 marked at the bottom corner, Exhibit 3 and 4, and I  
23 believe these are attached to your filing of Exhibit 19

1 to the summary judgment reply. I think that was the  
2 three documents of the exhibit.

3 Those two documents that I am showing you, do you  
4 remember seeing those at the hearing, the Michael Hardy  
5 hearing?

6 A Yes. I think I saw this.

7 Q And your lawyer has submitted them to the  
8 court in this case; are you aware of that?

9 A No.

10 Q My question to you is: Is it your  
11 understanding that those are the petitions that you are  
12 talking about?

13 A I don't know if this is what they were talking  
14 about or not.

15 Q Because you never saw it. When did you learn  
16 there was a petition of some kind?

17 A I think he was going around from dorm to dorm  
18 asking people to sign.

19 Q Who was that?

20 A Mr. Dortch.

21 Q When was that?

22 A I don't know exactly when it was.

23 Q But it was in June or July of '05; right?

1 A I can't say.

2 Q Why can't you say?

3 A Because I don't know when it was.

4 Q Well, you have sued the department and you are  
5 claiming that this is a basis for suing the department.  
6 I need to know.

7 If we are talking about that, that is fine. That  
8 is all I want to know. But if we are talking about  
9 something else that you are suing the department for, I  
10 need to know.

11 A Well, he didn't ask me to sign it. So I can't  
12 be sure if that is what he had for everybody to sign or  
13 not.

14 Q When did you first learn this had even  
15 happened? At the hearing?

16 A No. I had heard it before then that he had  
17 wanted people to sign a petition.

18 Q How did you hear it?

19 A I think Ms. Harris told me about it.

20 Q Okay. Well, I will represent to you, if there  
21 is any other petition that existed, I am unaware of it.  
22 And if you are aware of something other than that, I  
23 need you to let me know.

1           A    No, I don't know, because I didn't see the  
2           petition that was going around for people to sign.

3           Q    But you are suing the department as though you  
4           knew it. So, I mean, if you are going to subsequently  
5           come back and say that there was something else, I need  
6           to know that now. That is all I am saying.

7           A    I don't have any evidence that there was.

8           Q    Anything else that Dortch did?

9           A    Mr. Hood told me that --

10          Q    Mr. who?

11          A    Mr. Hood.

12          Q    Head?

13          A    H-O-O-D. I was working with him and he told  
14          me the reason that people were treating me the way that  
15          they were because a lot of things had come over from  
16          Paige Hall, from Mr. Dortch.

17          Q    Things had come over from Paige Hall, you  
18          said?

19          A    Yes. He was saying that I was a whore, freak,  
20          and I wore tight clothing and that I had had sex with  
21          the boys.

22          Q    That you had had sex with the boys?

23          A    Yes.

1 Q Hood told you that people were mistreating you  
2 because you had been having sex with the boys?

3 A He said a lot of talk had been going on,  
4 before I had gotten there to ITU, about me.

5 Q Had you heard that from anyone else?

6 A No.

7 Q Now, does this have to do with Rogers Dortch  
8 or is this separate?

9 A Rogers Dortch is the one that was telling  
10 people.

11 Q How do you know that?

12 A Mr. Hood told me.

13 Q So Hood didn't say to you -- didn't accuse you  
14 of having sex with the boys; Hood told you what Dortch  
15 was saying; correct?

16 A Yes.

17 Q Did Hood tell you that he heard Dortch say  
18 that?

19 A Did he tell me that he heard Dortch say that?

20 Q Yes.

21 A No.

22 Q So how do you know he ever heard anybody say  
23 that? You just took Hood's word for it that someone

1 else said something?

2 A Yes.

3 Q How many times did you hear something like  
4 that?

5 A How many times did I hear something like?

6 Q Yes. Is that the only time you have ever  
7 heard anybody say that you had had sex with the boys and  
8 that you were, whatever the other things you said he  
9 said, a person of ill repute, in substance?

10 A If they said it, they probably wouldn't say it  
11 to me.

12 Q I didn't say if they said it. I asked you how  
13 many times have you heard. Other than Hood telling you  
14 that he had heard that, how many other times did you  
15 hear something like that?

16 A I guess when Mr. Smith said he had sex with  
17 me.

18 Q To whom did Mr. Smith say he had sex with you?

19 A He didn't tell you?

20 Q I remember him saying that you did something  
21 extremely inappropriate, but I don't remember -- he may  
22 have -- him saying that y'all had sex.

23 A He said that I did something extremely



1 inappropriate?

2 Q My recollection was that he said you grabbed  
3 his penis. You were there when he gave the testimony.

4 A No, I wasn't.

5 Q You weren't at the hearing?

6 A Not when he gave that testimony.

7 Q All right. Have you not reviewed the  
8 documents that I have produced to your lawyer in this  
9 case? There have been quite a few.

10 A Not that one.

11 Q Have you not read the transcript that has been  
12 produced to your lawyer?

13 MR. JACOBS: To clarify, it hasn't been  
14 produced to me, and, no, she hasn't read  
15 it.

16 Q Now, Mr. Smith, you heard that he said that in  
17 the hearing, or did you hear that he said that somewhere  
18 else?

19 A Well, he had been out here on the yard saying  
20 some things about me that weren't very nice.

21 Q That weren't nice?

22 A Right.

23 Q To whom?

1 A Carl Gadston told me --

2 Q Carl Gadston?

3 A Yes. -- about three other men who were  
4 talking about --

5 Q When was this?

6 A When did Carl tell me this? 2006 or 2007.

7 Q Where is Mr. Smith now? Do you know?

8 A I think he works here. I saw him in training  
9 not too long ago.

10 Q Do you have a complaint against Mr. Hood?

11 A No.

12 Q Mr. Hood hasn't mistreated you; Mr. Hood told  
13 you that somebody else did?

14 A He told me about Ms. Whitted and Ms. Griner  
15 opening my check. He told me about the reason why  
16 everybody was treating me in the manner in which they  
17 did.

18 Q Okay.

19 A He told me about Mr. Dortch.

20 Q And Mr. Smith has said things about you. Do  
21 you have idea why Mr. Smith would lie about you?

22 A No, I don't.

23 Q I am certain that it is your testimony that

1 that is a lie, whatever he said?

2 A Yes, sir. That is a lie.

3 Q And do you have anything at all to suggest why  
4 he -- what his motive was, why he would have done that,  
5 what caused him to do that?

6 A No, sir, I do not.

7 Q No earthly idea?

8 A No, sir.

9 Q Do you have a complaint against Carl Gadston  
10 or was it simply that he told you something that other  
11 people had done?

12 A Yes.

13 Q No complaints against Carl Gadston?

14 A No.

15 Q What else? What other co-employees?

16 A I think Carl also told me that Percy James  
17 said everybody should stay away from me because I was  
18 going to get them in trouble.

19 Q All right. Now, Percy James said that or  
20 Percy James told you that somebody else said that?

21 A No. Carl told me that Percy James told him  
22 that, and some other men.

23 Q What did you understand Carl to be telling you

1 that Percy James was doing or saying?

2 A To stay away from me because I would get  
3 people in trouble.

4 Q How are you going to get them in trouble?

5 A I have no idea.

6 Q When did Gadston tell you that Percy James was  
7 telling people to stay away from you because you would  
8 get them in trouble?

9 A 2006 or 2007.

10 Q Where did Gadston tell you this? Where were  
11 y'all?

12 A I think he came to the dorm.

13 Q So this would have been after you had made the  
14 allegations against your co-workers that this lawsuit is  
15 now based on; right?

16 A Yes.

17 Q So you accused your co-workers of  
18 discriminating against you and you have sued the  
19 department and part of your case is that somebody said  
20 stay away from you because you will get them in trouble;  
21 is that correct?

22 A I am sorry. Can you repeat that?

23 Q You have claimed that your co-workers have

1 discriminated against you; correct?

2 That is what we are sitting here talking about;  
3 right?

4 A Uh-huh.

5 Q And you made that claim before Carl Gadston  
6 told you that Percy James said this about you; right?

7 A Yes. I have never worked with Percy James  
8 before.

9 Q But you had certainly accused your co-workers  
10 of discriminating against you, and now you have sued the  
11 department because of what you say those co-workers have  
12 done to you; right?

13 A Yes.

14 Q And part of your case now is that your  
15 co-workers, after you made that claim, said stay away  
16 from you, you will get them in trouble? I have got that  
17 pretty clear, don't I?

18 A Yes. But I do not work with Percy James.

19 Q Who else?

20 First of all, let me go back. When you say it is  
21 likely -- Assuming Gadston was telling you the truth and  
22 assuming Mr. James did say people should stay away from  
23 you because you will get them in trouble, isn't it

1 likely that he is talking about your claims against your  
2 co-workers, in general, mistreating you?

3 MR. JACOBS: Object to the form.

4 MR. PERRY: Go ahead and answer. You can  
5 answer.

6 A I wouldn't have thought that Percy James would  
7 have known about that.

8 Q You wouldn't have thought that Percy James  
9 would have known that you have accused all of your  
10 co-workers of mistreating you and you have caused these  
11 investigations to all take place and all your co-workers  
12 to be investigated and you wouldn't think your  
13 co-workers would know about that?

14 A Percy James doesn't work with me. And I was  
15 told that these things were confidential.

16 Q Mr. Staton goes and interviews all these  
17 people and asks them a bunch of questions and you think  
18 they are not going to say, Dang, let's stay away from  
19 her?

20 A If he tells them that they shouldn't talk  
21 about it, I would think they wouldn't.

22 Q Who else? What other co-workers?

23 A Mr. Lee.

1 Q Now, Mr. Lee is a supervisor. I think we  
2 started saying that Mr. Lee and Mr. Bolling were the  
3 supervisors that you are making claims against. I am  
4 now talking about your co-workers. Any other  
5 co-workers?

6 A I can't think of anyone else at this moment.

7 Q So we have got Vanessa Hall, Whitted, Griner,  
8 Dortch, Smith, and Percy James. Is that it?

9 A Yes, but I have never worked with Percy James  
10 before.

11 Q I understand. Your complaint against Percy  
12 James is that you heard what he said?

13 A Yes.

14 Q Carl Gadston said that he said stay away from  
15 you, you will get them in trouble?

16 A Yes, but I have never worked with him before.

17 Q And other than Carl Gadston saying that, you  
18 never heard that otherwise?

19 A No.

20 Q Are there any other bases of your co-workers  
21 having mistreated you for which you are suing DYS?

22 A Not helping me to fulfill my job duties when I  
23 needed help.

1 Q Who specifically?

2 A I'm not for sure that -- I had asked Ms. Hall  
3 that morning. I'm not sure who else came in with her,  
4 but I think I asked the people that were on that shift  
5 and nobody knew how to fill out the paperwork.

6 Q That is the incident you referenced earlier  
7 when you asked her how you fill out the paperwork and  
8 she wouldn't tell you?

9 A Yes.

10 Q So we have already actually covered that?

11 A Yes.

12 Q Anything else?

13 A The fact that they were watching me closely  
14 and giving information to Mr. Lee.

15 Q Giving Lee information?

16 A Yes.

17 Q Tell me on what basis, what facts lead you to  
18 the conclusion that they were watching you closely and  
19 giving Mr. Lee information.

20 A The memos.

21 Q Which memos?

22 A That are in the evidence.

23 Q You are talking about when you were late, or



1 whatever? Is that what you are talking about?

2 A Well, I was late three times.

3 Q No. No. I am asking you if that is what you  
4 are talking about? Or is there something else? What  
5 memos are you talking about?

6 You said the memos that are in evidence, and I  
7 don't know what you are talking about.

8 A The 26 --

9 Q Look and see if it is in there. Those are  
10 copies of the exhibits that your lawyer has submitted.

11 That is Exhibit Number 8?

12 A Yes.

13 Q You are looking at the daily time and  
14 attendance sheets. There is a contact with staff,  
15 signed by Mr. Lee, a memo from -- who is that?

16 A Jacob Hammond.

17 Q Who is Jacob Hammond?

18 A I work with him.

19 Q Flip to the next one, if you would. This is a  
20 memo. This is dated 2/1/06. Whose signature is that?

21 A That is Mr. Washington.

22 Q The next is a memo from whom?

23 A Mr. Lee.

1 Q And then the next is what?

2 A That is Mr. Lee's handwriting.

3 Q What is this?

4 A Felicia Whitted.

5 Q That is Ms. Whitted.

6 And who is this?

7 A That looks like Mr. Lee's handwriting.

8 Q Felicia Whitted. Who is this?

9 A That looks like Mr. Lee's handwriting.

10 Q And then this?

11 A Felicia Whitted.

12 Q I am not going to go through each of these.

13 Let me ask you this: When did you become aware of these  
14 documents?

15 A Just recently.

16 Q Just recently. These documents were produced  
17 to your lawyer in this lawsuit; right?

18 A Yes.

19 Q You didn't know anything about these memos  
20 until this was filed?

21 A Yes.

22 Q So, obviously, the fact that those memos were  
23 written isn't something that created any pain and

1 suffering on your part, for example, because you didn't  
2 know about them; right?

3 A No. I had suspected and now we have evidence  
4 of it.

5 Q You suspected that --

6 A That I was being monitored more closely than  
7 my peers.

8 Q How does that show that you were monitored  
9 more closely than anyone else?

10 A Because I was late three times and there is a  
11 record that shows that there were people who were late  
12 more than three times who weren't counseled the way that  
13 I was.

14 Q Now, why do you think they were watching you  
15 closely?

16 A I don't know.

17 Q Do you have any idea to suggest the answer to  
18 that question, why would they do that?

19 A No.

20 Q You don't have any evidence whatsoever to  
21 suggest an answer to that question?

22 A No.

23 Q Other than the people whose names are on those

1     memos and the people we have covered, is there anyone  
2     else that you are suing DYS, for their actions?

3           A     I think when I made the allegations, they  
4     could have been investigated more thoroughly.

5           Q     Now, who are you talking about?

6           A     Mr. Staton, the investigator.

7           Q     You are not talking about the initial  
8     investigation which Debra Spann did, are you?

9           A     I didn't know about it when it happened.

10          Q     That is not my question. I asked you if there  
11     is anybody else that you are suing the department  
12     because of something they did. And your answer was that  
13     you are apparently suing the department because the  
14     department investigated your allegations. And my  
15     question is -- I think you know Ms. Spann investigated  
16     some; Mr. Staton investigated some.

17          My question is: Are you suing the department  
18     because of Ms. Spann's investigation, or are you just  
19     talking about Mr. Staton?

20          A     I think it all could have been handled  
21     differently.

22          Q     So you are suing the department for both Ms.  
23     Spann and Mr. Staton?

1           A    I am suing the department because I was  
2           treated unfairly and I was discriminated against because  
3           of the complaint that I made.

4           Q    I understand that. That is general. I am  
5           trying to be specific. I am trying to find out if you  
6           have a complaint about Ms. Spann, too?

7           A    No, I don't.

8           Q    So when you say it could have been handled  
9           differently, the answer is, you are talking about what  
10          Mr. Staton did, not what Ms. Spann did?

11          A    Exactly.

12          Q    That is all you had to say.

13          Ms. Spann concluded that Mr. Hardy had done  
14          something wrong, didn't she?

15          A    Yes. I have seen that lately.

16          Q    I beg your pardon?

17          A    I have seen that lately. I didn't know until  
18          recently.

19          Q    You didn't know? You and I met at two o'clock  
20          in the morning and you had to go testify because the  
21          department fired Mr. Hardy, and he appealed his  
22          termination and you testified?

23          A    Yes. But you did not tell me anything about

1 what Ms. Spann said. You told me that you believed  
2 everything that I had said.

3 Q I don't remember telling you that I believed  
4 everything you said, but we certainly presented a good  
5 case, didn't we?

6 A Yes. Because you said if you lost that one,  
7 that would be the worst defeat of your career.

8 Q And we didn't lose it either, did we?

9 A No.

10 Q I don't think I told you it was the worst  
11 defeat I would have ever had. I think I told you I  
12 would have been very surprised to lose it.

13 So I would appreciate if you are going to say what  
14 I said that you be correct.

15 A That is what I remember you saying, sir.

16 Q All right. Is there any other co-workers that  
17 we haven't covered? Have you thought of anybody else?

18 A Not at this moment. I am sorry.

19 Q Other than Mr. Staton, is there anybody else  
20 other than your co-workers or your two supervisors?

21 A Not at this moment.

22 Q Mr. Lee, what is it that you claim that he has  
23 done? First of all, what is it that you claim he did?

1           A    Mr. Lee, like I said, had people monitoring me  
2           very closely. I was late three times, but there were  
3           other people that were late more than three times. He  
4           did not counsel them the way that he did me.

5           Mr. Lee wrote me up for insubordination when my  
6           mother was sick.

7           Q    That is the "you must be tripping" comment,  
8           right, the insubordination write-up?

9           A    The insubordination write-up, when my mother  
10          was sick.

11          Q    That is the "you must be tripping" comment;  
12          right?

13          A    "Are you tripping?"

14          Q    Right. What else?

15          A    Mr. Lee called my home and accused me of  
16          cursing the nurse.

17          Q    Accused you of what?

18          A    Cursing Nurse Gray.

19          Q    When did this happen?

20          A    I'm not sure of the date. I think it was  
21          August 14th.

22          Q    What year?

23          A    2006, if I am not mistaken.

1 Q What else?

2 A On numerous occasions, I have called Mr. Lee;  
3 he would not return my phone calls. I called his  
4 supervisor, Mr. White, who told me that he needed to  
5 find out why Mr. Lee was doing that.

6 Q Who told you that?

7 A Mr. White.

8 Q Who is Mr. White?

9 A Mr. Lee's supervisor.

10 Q He is a specialist?

11 A Yes. Because he is on call twenty-four hours  
12 a day, seven days a week.

13 Q So you called Mr. Lee; Mr. Lee wouldn't return  
14 your calls?

15 A Yes.

16 Q So you called Mr. White, Mr. Lee's supervisor,  
17 and he told you to find out why Mr. Lee wouldn't return  
18 your calls?

19 A He was going to.

20 Q He told you he will?

21 A He was going to figure out what was going on,  
22 because it wasn't the first time.

23 Q The first time what? That you had called Mr.



1 White?

2 A That Mr. Lee would not return my phone calls.

3 Q How many times did you call Mr. White?

4 A I think I spoke with Mr. White twice.

5 Q What year was this?

6 A 2007.

7 Q What else?

8 A Also, him advising my co-workers to watch me  
9 closely. I think that wasn't right.

10 Q How do you know that he advised them to watch  
11 you closely?

12 A The memos that they wrote.

13 Q Because they wrote memos, you think he told  
14 them to watch you?

15 A Yes.

16 Q All right. Anything else?

17 A He wrote me up for not going to a staff  
18 meeting.

19 Q That was a staff meeting in which there was a  
20 mandatory training taking place; right?

21 A I don't know.

22 Q Anything else?

23 A I guess the harsh manner in which he speaks to

1 me, and it is only reserved for me.

2 Q You don't think he speaks harshly to anybody  
3 but you?

4 A I think that there is a difference in the way  
5 that he speaks to me than the way he does to others.

6 Q But you would not go so far as to say that he  
7 doesn't have a harsh tone?

8 A A harsh tone?

9 Q Mr. Lee.

10 A I know that he has a harsh tone with me.

11 Q Well, he has a harsh tone with other people  
12 too, doesn't he?

13 A I don't know. All I can say is he has a harsh  
14 tone with me.

15 Q You have never heard him talk with other  
16 people?

17 A Yes. But he has never talked to them in front  
18 of me in that manner.

19 Q Anything else?

20 A That is all I can think of at this point.

21 Q Do you have any idea to suggest an answer why  
22 he would do this?

23 A No, sir, I don't.

1 Q And since you don't have any idea, you  
2 certainly don't have any evidence either, do you?

3 A Of what?

4 Q To answer the question why, assuming he has  
5 done all of these things, why he has done them?

6 MR. JACOBS: Object to the form of that,  
7 whether there is evidence or not. You  
8 can answer it if you can.

9 A Sir, I don't know.

10 Q You don't know what?

11 A Why he does the things that he does.

12 Q And you are not aware of any evidence to  
13 answer that question, are you?

14 A Any evidence of what?

15 Q To answer the question why he has done this?

16 A No. I don't know why he did this.

17 Q Now, these things took place -- Are you aware  
18 of anything at all, anything to connect Mr. Lee to  
19 Michael Hardy?

20 A No. I don't know who knows who.

21 Q You don't have any reason to suggest there is  
22 a connection between Michael Hardy and Mr. Lee, do you?

23 A The only thing I can think of is when I

1 mentioned the clique. And like you said, it is known  
2 that there is a clique on the campus.

3 Q You say I said that?

4 A Yes, sir. You told me that night you were  
5 prepping me, that it is known there is a clique on the  
6 campus and there are dorm cliques, and you also told me  
7 that cliques in facilities like these are naturally  
8 occurring phenomenon.

9 Q Are you testifying that your evidence in this  
10 case is something that I have said to you?

11 A I thought that when you said it, you were  
12 confirming.

13 Q Do you have any idea, assuming that there are,  
14 in your words, cliques -- I am pretty sure I have never  
15 used that word -- that naturally occur, that Mr. Lee and  
16 Mr. Hardy were in a similar clique; that they ever  
17 worked together; that they had any kind of relationship?  
18 Do you have any idea of that?

19 A I don't know, sir.

20 Q So the answer to that is, no, you don't know  
21 that that is true? You don't have any reason to believe  
22 that is true; that there is a connection between the  
23 two?

1 A I don't know, sir.

2 Q You don't know what?

3 A I don't know about their personal  
4 relationships, because I wasn't personally involved with  
5 them.

6 Q Well, why are you suing the department in this  
7 lawsuit for what you say Mr. Lee has done?

8 A Because time after time after time I have  
9 complained about Mr. Lee, but Mr. Lee continued to do.

10 Q So that gives you a federal right to a  
11 lawsuit?

12 A Mr. Lee continued to abuse me, sir.

13 Q I understand. And that gives you a federal  
14 right to a lawsuit?

15 MR. JACOBS: Calls for a legal conclusion.

16 Q I am just asking. I think we clarified at the  
17 beginning that the reason you have sued this department  
18 is because of what Michael Hardy did to you that was  
19 sexually inappropriate and what other people have done  
20 because you complained about Michael Hardy.

21 And you are telling me now that you don't have any  
22 idea that there's any connection between these people  
23 and Michael Hardy; am I correct?

1           A    I thought that you would be able to make him  
2   stop.

3           Q    You thought that I would be able to make --

4           A    The administration. The people who were --

5           Q    So you filed a federal lawsuit because nobody  
6   can make your co-workers like you?

7               MR. JACOBS: I object to the form of that.

8           Q    Is there any evidence that you are aware of to  
9   connect any of this, what you have talked about, any of  
10   these things that you have talked about, the reason you  
11   are suing this department, to Michael Hardy?

12          A    Sir, I didn't know any of these people.

13          Q    It is a simple yes or no question. If you  
14   don't, that is fine.

15          A    Do I have evidence?

16          Q    Anything? Even an idea.

17          A    Yes. I think it has to do with that.

18          Q    And on what facts do you base that on now?

19          A    Like I said, I didn't know any of these  
20   people, and all of this started happening.

21          Q    It all started happening after you accused  
22   your co-workers of mistreating you; right?

23          A    No. After I told about Mr. Hardy.

1 Q All right. We didn't cover Bolling.

2 What did Bolling do to you?

3 A I was at Mr. Bolling's staff meeting, and when  
4 I got to the staff meeting, I sat down, and everybody  
5 else who was sitting next to me got up out of their  
6 seats and took seats in other places. Mr. Bolling was  
7 standing with his back to me and he turned and gave me a  
8 look of disgust.

9 Q This was when?

10 A This was the first staff meeting that I had  
11 gone to in that dorm. I'm not sure of the date.

12 And then when I realized what was happening, I felt  
13 physically ill. I asked Mr. Hood where the restroom  
14 was, and he told me and I went to the restroom, because  
15 I had never toured the building. And when the staff  
16 meeting was over, Mr. Bolling told me that, basically,  
17 he didn't want any mess in his dorm.

18 When I couldn't go to work that day, he said he was  
19 going to call Ms. Cole on me. And after that, when I  
20 came back to work, I went to take my excuse to Ms.  
21 Spann, and he had just left her office, telling her he  
22 didn't want me in his dorm.

23 Q Did Ms. Spann tell you that he had told her

1 that?

2 A Yes, sir.

3 Q Did she tell you what he said?

4 A That he didn't want me in his dorm; that she  
5 had been fighting real hard trying to keep me in the  
6 dorm.

7 Q What else did Mr. Bolling do?

8 A Shortly after that, Mr. Bolling got another  
9 job.

10 Q And then Mr. Lee came in; right?

11 A Yes. And Mr. Bolling trained Mr. Lee for  
12 about three weeks and then left.

13 Q So have we covered everybody that you claim  
14 have mistreated you in this lawsuit? Anybody else?

15 A I feel like you have mistreated me.

16 Q You think I have?

17 A Yes, sir.

18 Q In what way?

19 A Like I said earlier, you told me that you  
20 believed me. You told me that I was your friend; that I  
21 didn't have to worry about the other people out here not  
22 liking me for telling the truth, because not only were  
23 you my friend, but I had other friends in high places.



1 I trusted you with my thoughts while you were prepping  
2 me, and now it seems that you don't believe me anymore.

3 Q What is it that you think I don't believe?

4 A The fact that these people have not treated me  
5 fairly.

6 Q In the first place, we did not try what these  
7 other people had done. And I did not prep you in  
8 connection with any of that, did I?

9 What I prepped you in connection with was Michael  
10 Hardy; isn't that true?

11 A Yes, sir, but we talked about them, also.  
12 There were a lot of people down there at the hearing,  
13 but I think you made a motion for them not to testify.

14 Q I think everybody testified anyway.

15 I want to make sure that we are clear. What is it  
16 that you think that I have led you to believe that I  
17 believed that I now don't?

18 A I thought you believed that Mr. Hardy was  
19 wrong in what he did.

20 Q Do you think I would have gone and presented  
21 that case and had him fired if I didn't believe he had  
22 done something that he shouldn't have done?

23 A I don't know.

1 Q Do you think I am sitting here on the opposite  
2 side of the table from you, as you put it, because I  
3 don't believe anymore that he did anything that he  
4 shouldn't have done?

5 A (Witness nods head.)

6 Q What has given you that idea?

7 A Because these people have basically done the  
8 same thing, and I have been coming and telling about  
9 what they have been doing since it started, and I have  
10 no reason to lie on them.

11 Q You have talked to Mr. Staton two times,  
12 haven't you?

13 A Yes.

14 Q And Mr. Staton recorded what you said, and  
15 then he went and investigated them, didn't he?

16 A One time.

17 Q One time?

18 A Yes.

19 Q I will tell you that he did it twice, and I am  
20 going to cover that with you.

21 You think I am mistreating you by defending this  
22 lawsuit that you have brought against DYS, don't you?

23 A No. Because that is your job to defend DYS.

1 Q So what are you saying?

2 A What I am saying is that I wouldn't have  
3 thought it would have been you.

4 Q Defending DYS?

5 A Yes, sir. I thought maybe it would have been  
6 somebody else.

7 Q That is what I thought you were saying. I  
8 don't know what is the difference between that and what  
9 I just asked you.

10 Anything else?

11 A Not that I can think of at the moment, sir.

12 Q Quickly, Mr. Farley. If I remember right,  
13 there was something that Michael Hardy did and you got  
14 right up and went out and you said you told Mr. Farley  
15 what had happened. Is my memory right?

16 A No, it isn't.

17 Q What was it that you told Mr. Farley? Let me  
18 back up. Who am I thinking about?

19 A Rushton Farley?

20 Q The instance where Mr. Hardy did something and  
21 then you went outside and had a conversation with one of  
22 your co-workers and said, Can you believe what he did?

23 A I was already outside. They were coming from

1 the dining hall. Mr. Farley.

2 Q That was Farley. I thought so. And you are  
3 aware that Mr. Farley said that didn't happen?

4 A No, I didn't read any of that. I wasn't privy  
5 to any of the transcripts.

6 Q Well, he did. Are you aware of any reason why  
7 Mr. Farley would lie?

8 A No, sir. I am not aware of any reason why he  
9 would lie. Maybe he is afraid for his job.

10 Q What do you mean?

11 A I am afraid for my job right now.

12 Q Because you are suing the department and you  
13 work for the department and you are afraid the  
14 department is going to --

15 A I have been afraid for my job since 2003.

16 Q You know -- Well, we will cover all of this.

17 Ms. Spann, you talked with Ms. Spann on the day you  
18 made this first complaint. Did you tell Ms. Spann or  
19 did your mother tell Ms. Spann that she heard Michael  
20 Hardy ask you to go to a hotel on that telephone  
21 conversation?

22 A We only had one phone in the house. I still  
23 only have one phone in my house now. And my mother was

1 sitting at the table. She actually answered the phone.

2 Q I know that.

3 A Oh, you do?

4 Q My question is: Did you tell or did your  
5 mother tell Ms. Spann that your mother heard that said?

6 A Heard him say it?

7 Q Heard him say that.

8 A No. That must have been a miscommunication,  
9 because I told her. She heard what I was saying.

10 Q And your mother nodded her head; is that  
11 right?

12 A What do you mean?

13 Q Ms. Spann heard what you were saying, your  
14 mother heard what you were saying and your mother said  
15 on the telephone he asked you to go to a hotel, and your  
16 mother nodded her head?

17 A I'm not sure. I can't say. I don't remember.

18 Q But in any event, your mother didn't actually  
19 overhear that; she was sitting present when the phone  
20 call took place and when you hung up, you told her that  
21 that is what was said?

22 A Yes. She only heard what I said.

23 Q And then the only way she knew that Mr. Hardy

1 had asked you to go to a hotel in that conversation is  
2 that you told her that?

3 A Yes. She heard me telling him on the phone.  
4 She heard me talking to him. She didn't hear what he  
5 was saying to me. And when I got off the phone, I  
6 re-played the conversation to her. Not on a tape, but I  
7 told her verbally.

8 Q Now, Exhibit 1 to the documents that you have  
9 filed in this case in response to the summary judgment  
10 motion of the department is a declaration by you, Tera  
11 McMillian; it is a nine-page affidavit.

12 You signed it on the back and you say, you declare  
13 under penalty of perjury that the foregoing is true and  
14 correct. Do you remember signing this?

15 A Thank you. Yes, sir.

16 Q That is your signature on the last page?

17 A Yes, sir.

18 Q And look at that and tell me whether that is  
19 your affidavit?

20 A Yes, sir.

21 Q Now, on, I believe, the second page, you make  
22 a statement there that Mr. Hardy frequently told you  
23 that he liked big titties?

1 A Yes.

2 Q He told you that once, didn't he?

3 A He told me that once?

4 Q Right.

5 A No.

6 Q Have you ever told anybody else in all of the  
7 statements that you have made before that, on any other  
8 occasion other than the time you say he came up behind  
9 you and grabbed you, that he made that statement?

10 A Did I tell someone else?

11 Q Yes.

12 A I'm not sure if I told someone else or not.

13 Q Well, you say there that he did it frequently?

14 A Yes.

15 Q When did he do that? How frequently?

16 A Quite a bit.

17 Q What does that mean?

18 A He was making remarks almost every time I saw  
19 him, and if they weren't verbal, there were other subtle  
20 things that he would do other than verbalize stuff.

21 Q All right. You also mention in that affidavit  
22 something about many instances of sexual relationships  
23 among employees and between students and employees at

1 Mt. Meigs. Do you remember making that statement?

2 A On page 4?

3 Q Do you see it?

4 A Yes, sir.

5 Q Is that true?

6 A The examples that are down here?

7 Q No. Is it true that you are aware of many  
8 instances of sexual relationships between staff and  
9 students at Mt. Meigs?

10 A There have been many.

11 Q I am sorry?

12 A There have been many and some of them are  
13 still together today.

14 Q You know that?

15 A Yes. It has happened.

16 Q How do you know that? I guess I am going to  
17 have to do this one at the time.

18 First of all, you are aware of more than one  
19 instance of a sexual relationship between a staff at Mt.  
20 Meigs and a student at Mt. Meigs; is that correct?

21 A More than one?

22 Q Yes.

23 A Yes.



1 Q Tell me every one that you are aware of. You  
2 put it in the affidavit.

3 A Yes.

4 Q And now you are hesitating to testify?

5 A No, I am not.

6 Q I want to know. You said you know more than  
7 one. Tell me. Why are you hesitating?

8 A Ms. Lawford that worked in pre-CAPS was fired  
9 because she was caught having sex with a student.

10 Q Who was?

11 A I know of that incident.

12 Q That was whom?

13 A Ms. Lawford from pre-CAPS.

14 Q And she was fired?

15 A Yes, she was.

16 Q And who else?

17 A Student "D" (redacted) has a child with a  
18 former employee at the ITU right now.

19 MR. PERRY: Put in the record the initials,  
20 not the student's name.

21 Q When was this?

22 A They are together now.

23 Q Is he a student now?

1 A No.

2 Q How old is he?

3 A I'm not sure.

4 Q How many years ago was he here as a student?

5 A I was working here when he was a student here.

6 Q So it has been since 2002?

7 A Yes.

8 Q And you are telling me -- How do you spell it?

9 A "D" (redacted).

10 Q And her name, again?

11 A I can't think of it at the moment. I am  
12 sorry. But I have it written down.

13 Q Where do you have it written down?

14 A In my car. I am sorry. I just didn't think  
15 you were going to ask that.

16 Q Well, you put it in the affidavit.

17 A Yes, uh-huh.

18 Q Who else?

19 A Do you mind if I get my notes?

20 Q Not a bit. Do you want to go get them?

21 A Yes.

22 (Thereupon, a break was taken.)

23 Q Ms. McMillian, I noticed that you came back in

1 and you don't have anything in your hand.

2 MR. JACOBS: I have it, Dudley, and I have  
3 something she has used to -- actually,  
4 she has prepared it for me, but we are  
5 going to waive privilege over this one  
6 document since she can't remember that  
7 person's name.

8 Q You happened to have one document in your car,  
9 and that is the one?

10 MR. JACOBS: It has that name on it that she  
11 couldn't remember.

12 Q Is that true, you have one document in your  
13 car and that is the document?

14 A This is the document. That is why it was  
15 folded like this.

16 Q It was what?

17 A That is why it is folded like that.

18 Q It was actually where?

19 A In the whatever you call that thing that you  
20 put lotion and stuff in. The console.

21 Q This document, let me mark this as an exhibit.  
22 I guess this will be the first one.

23 (Thereupon, DYS Exhibit No. 1

1                   was marked for identification.)

2           Q    I see that this says "C" (redacted) or "C"  
3 (redacted). Is it --

4           MR. JACOBS: Why don't you let her have it  
5                   back, and she can tell you.

6           Q    May I come around and look over your shoulder?

7           A    Sure.

8           Q    What is that one?

9           A    That is nothing. It's been a while. His name  
10 is -- We called him "D" (redacted).

11          Q    And who is Ms. Hardin?

12          A    She worked in ITU.

13          Q    Are you saying that "D" and Hardin had a  
14 relationship?

15          A    Yes. They have a baby now together and are  
16 together now.

17          Q    And you have Stufurgen?

18          A    Stufurgen. She worked in Thaggard Hall. The  
19 child's name was "CC" (redacted).

20          Q    And he was in for bank robbery?

21          A    Well, they did a bank robbery together.

22          Q    They did a bank robbery together?

23          A    Yes.

1 Q Were they caught?

2 A Yes. That is how we know they did a bank  
3 robbery together.

4 Q And Honeycomb?

5 A That is not his real name.

6 Q Who is Honeycomb?

7 A One of the students.

8 Q So these are the many instances that you were  
9 referring to in your affidavit?

10 A Yes. That is some of them.

11 Q Are there more?

12 A I am sure that there are.

13 Q How do you know?

14 A It is an ongoing situation.

15 Q It is an ongoing situation. And you are aware  
16 of that?

17 A Everybody that works out here is aware of  
18 that.

19 Q I work out here and I ain't aware of it

20 A You don't come behind the fence very often.

21 Q Well, I am fixing to be. How do you know or  
22 when did you first know anything about "D" (redacted)  
23 and Hardin?

1 A Ms. Griner and Ms. Hardin are friends.

2 Q Ms. Griner and Ms. Hardin are friends?

3 A Yes.

4 Q How does that answer my question? When did  
5 you first learn about it?

6 A When did I first learn about it? I'm not  
7 sure. How many years ago?

8 Q Yes.

9 A I can't really tell you how many years, or  
10 what exact time frame.

11 Q Was "D" (redacted) a student at the time?

12 A Yes.

13 Q At the time "D" (redacted) was a student, you  
14 knew that there was supposedly a sexual relationship  
15 between these people?

16 A Yes.

17 Q When did you learn about the Stufurgen and "C"  
18 (redacted)?

19 Well, first of all, you are also saying, not only  
20 did they rob a bank, but you are saying they had a  
21 sexual relationship, are you not?

22 A From my understanding, yes.

23 Q What is that understanding based on?

1 A Ms. Johnson. That may be misspelled.

2 Q Were you aware -- I am sorry.

3 So you have an understanding that they had a  
4 relationship. Is it your understanding that that  
5 relationship started while he was a student and she was  
6 a staff?

7 A Yes.

8 Q What was that relationship based on?

9 A Ms. Johnson told me about the bank robbery  
10 couple.

11 Q So Ms. Johnson told you this?

12 A Uh-huh.

13 Q And Ms. Thomas, it is your understanding that  
14 she had a sexual relationship with this child?

15 A Ms. Johnson also told me about that.

16 Q When did my Ms. Johnson tell you this?

17 A 2007.

18 Q Do you have any information, firsthand, about  
19 any of this?

20 A Of the two of them, the bottom two?

21 Q Yes.

22 A No.

23 Q What about the first one?

1 A It is evident, you know.

2 Q How is it evident?

3 A I didn't see them actually, but there was  
4 rumors of that and they moved in together.

5 Q They moved in together when he left?

6 A Yes.

7 Q Do you know -- Well, obviously -- Have you  
8 told anybody until you are telling me now about this?  
9 Have you filed any incident reports or any kind of  
10 report about this?

11 A No, sir. No one has.

12 Q Why not?

13 A Because we want to keep our jobs. We have  
14 families, and we want to keep our jobs.

15 Q Explain that.

16 A I have a seven-year-old son. He is standing  
17 right out there.

18 Q No. No. No. You do know there is a policy,  
19 and in fact, there is a criminal statute that says that  
20 if you have a sexual relationship with someone in DYS  
21 custody, you can go to jail? You are aware of that,  
22 aren't you?

23 A They should go to jail.



1 Q And you know that, don't you?

2 A I didn't know it precisely, but I think they  
3 should go to jail.

4 Q And you know as a fact --

5 A That they should go to jail, yes.

6 Q No. And you know as a fact, if word gets up  
7 here, those people are going to be fired, don't you?  
8 The people who have a sexual relationship with students  
9 at this campus, you know for a fact that they will lose  
10 their job, don't you?

11 A I would hope they would.

12 Q You certainly would. And you have an  
13 obligation, don't you, to report that if you know about  
14 it?

15 A It was rumor.

16 Q I didn't ask you that.

17 A I wasn't --

18 Q You know that you have that obligation, don't  
19 you?

20 A Yes. But I wasn't in ITU while they were  
21 having their affair.

22 Q My question is: Why have you not told anybody  
23 until you put it in an affidavit in this lawsuit? Why

1 have you not told anybody?

2 A Why hasn't anyone else, sir? Everybody knows  
3 about this.

4 Q Well, not I, okay.

5 And you have never told me, have you?

6 You have never told anybody, have you?

7 A I have talked about it with people that work  
8 out here.

9 Q You have talked about it with who that works  
10 out here?

11 A With other people that work out here.

12 Q What people?

13 A As I said, Ms. Johnson.

14 Q You have talked about it with your co-workers?

15 A Yes.

16 Q Do you know whether or not Ms. Johnson has  
17 filed anything?

18 A No one has, that I know of.

19 Q No one has told anybody?

20 A No. I think there are some things that people  
21 are aware of. Like the woman in pre-CAPS who got fired  
22 for getting caught having sex with a child. Ms. Lawford  
23 got fired for that.

1 Q Right. I am trying to understand how you  
2 think. I really am. You told on Michael Hardy, and  
3 Michael Hardy immediately no longer supervised you and  
4 Michael Hardy got fired.

5 You are telling me that you know of some people who  
6 had some inappropriate sexual relationships with people  
7 and you know they got fired, all right. But you are  
8 sitting here telling me that you don't want to tell  
9 anybody because you don't want to get fired?

10 A No, sir. I don't want to get fired.

11 Q I don't understand that. Help me understand  
12 that.

13 A I have responsibilities.

14 Q Help me understand your thinking.

15 A My thinking is that I need to take care of  
16 myself and my son.

17 Q Let me suggest to you that if you know of  
18 something like that, that what your obligation is, is to  
19 tell this agency, okay?

20 A Yes, sir. That was rumor.

21 Q I am not talking about rumors. But you put in  
22 an affidavit that you know about sexual relationships  
23 between students and staff at this agency, and that is

1 the first knowledge that I had of it, all right.

2 I am explaining to you that your obligation as an  
3 employee of this agency and everybody else's too, and  
4 you might tell this when you hear one of these rumors.  
5 You better tell, okay? Because that will not be  
6 tolerated, and I think you know that. I think you know  
7 that.

8 The first person you mentioned was somebody who you  
9 said was fired for having a sexual relationship?

10 A The first person I mentioned was Ms. Hardin  
11 and "D" (redacted).

12 Q Well, then, it was the second?

13 A The second person wasn't on there.

14 Q Lawford, who is Lawford?

15 A She worked at pre-CAPS.

16 Q And she got fired, you said; right?

17 A Who?

18 Q You said she got fired because she had an  
19 inappropriate sexual relationship with a student?

20 A Yes, sir.

21 Q Right?

22 A Yes.

23 Q So my question is: Why is her name not on

1 here?

2 A Because someone just told me that the other  
3 day.

4 Q Someone told you what the other day?

5 A About Ms. Lawford.

6 Q Who told you?

7 A I think they were talking about it at the  
8 dorm.

9 Q Who was talking about it at the dorm?

10 A Two people that have been there longer than  
11 myself.

12 Q I am sorry. Who?

13 A Longer than myself, because I didn't know Ms.  
14 Lawford.

15 Q What are the names of the people who were  
16 talking about it?

17 A Mr. Stinson and Ms. Johnson, and I think Mr.  
18 Webster was there, also.

19 Q Anybody else?

20 A That is all I can think of. I think that is  
21 all the people that were there.

22 Q You do know that is against policy?

23 A About what?

1 Q That relationships between staff and students  
2 is against policy?

3 A It should be, yes.

4 Q You know that even fraternizing with students  
5 is against policy?

6 A Yes, sir.

7 Q You are trained on that, aren't you?

8 A Exactly.

9 Q And you do understand that you are required to  
10 report that?

11 A If I see that, yes.

12 Q Well, if you know it. You have put it in an  
13 affidavit that you know it is true.

14 A I knew it after the child was here no longer.

15 Q You have never witnessed personally any  
16 inappropriate sexual conduct that you haven't reported,  
17 have you?

18 A No, sir.

19 Q Mr. Hardy did some things that were offensive  
20 to you, didn't he?

21 A Yes, sir.

22 Q When he asked you to suck his "D," did you  
23 really say to him, "I just can't see myself doing that"?

1 A I didn't say that to him. I said something to  
2 the effect of, "Oh, Lord, Mr. Hardy, I can't do that."

3 I think that was a mental thought.

4 Q It is true that before that happened -- I am  
5 not comparing the two. But before that happened, you  
6 had engaged in banter, sexual talk, in the office?

7 A Yes, that was not directed toward me. There  
8 were jokes, but none of that was directed towards me  
9 personally.

10 Q When you told him you couldn't do that, he  
11 said something like "Stop acting crazy and get over  
12 here;" right?

13 A Yes, sir.

14 Q And I believe you said you looked at him and  
15 then you looked at the floor and you just said, "I  
16 couldn't do that"?

17 A Yes.

18 Q How come you didn't knock the daylights out of  
19 him?

20 A Because I wanted to keep my job. I really  
21 did. I still need my job after I leave here.

22 Q You have got your job.

23 A If I leave here today or tomorrow, I still

1 want to be able to work and provide for my child.

2 Q Now, Mr. Hardy at one point told you that he  
3 had been accused of sexual harassment. Do you have any  
4 reason to believe that that ever happened?

5 A I don't know whether it happened or not.

6 Q Did anybody ever tell you that that had  
7 happened, other than Hardy?

8 A One day after he had said that, Mr. Dortch,  
9 Mr. Smith, and I think Mr. Miles was there, Mr. Hardy  
10 was there also, and they started talking about a lady  
11 named Ms. May who had said that Mr. Dortch and, if I am  
12 not mistaken, Mr. Hardy had sexually harassed her, but  
13 they had gotten together and written some fictitious  
14 stuff about her that led to her being terminated.

15 I think Ms. Taylor was involved in that also. Ms.  
16 Taylor, Mr. Smith, Mr. Hardy, and Mr. Dortch.

17 Q You have never seen a report on that, have  
18 you?

19 A No, sir.

20 Q Sitting here today -- You know, you talked a  
21 good deal in this affidavit about how powerful Michael  
22 Hardy was?

23 A I thought he was.



1 Q You thought, past tense? You nod your head.

2 Is that a yes?

3 A At the facility, yes.

4 Q Now, we have talked about this before, you  
5 don't have the slightest doubt in your mind that he  
6 didn't have the power he convinced you that he had, did  
7 he?

8 A I don't have a doubt that he didn't have it?

9 Q It is perfectly clear now that that was not  
10 correct, isn't it?

11 A I think some people have backed off to keep  
12 their jobs, too.

13 Q You better believe it.

14 And you believed it at the time?

15 A Yes, sir.

16 Q But it was kind of a fairy tale that he  
17 created, wasn't it?

18 MR. JACOBS: Object to the form.

19 Q Do you understand my question?

20 A Yes, sir.

21 Q That is right, isn't it?

22 A I don't know if it was a fairy tale, but he  
23 had -- he was man of the hour while he was out here.

1 Q You think so?

2 A He had a lot of friends.

3 Q Do you?

4 A Do I have a lot of friends out here?

5 I wouldn't say friends, but I am friendly with  
6 people.

7 Q I am going to jump over to another subject.

8 There is something that I am puzzled about. If I  
9 understand what you just said, you are friendly to  
10 people?

11 A I am friendly with people, yes.

12 Q But what you are saying in this lawsuit is  
13 that people aren't friendly to you; right?

14 A Some of them.

15 Q Right. The people that we have talked about.  
16 And you are saying in this lawsuit that it makes you so  
17 miserable, that you suffered so greatly --

18 A Yes, I have.

19 Q -- that you are entitled to significant money  
20 damages because of that?

21 A I have suffered greatly, sir.

22 Q And you are claiming that you want to be  
23 compensated in money for that suffering? I understand

1 that correctly; right?

2 A Yes, sir. I have suffered greatly mentally  
3 and physically.

4 Q But at the same time, every one of those  
5 people, they work here on this campus. You do know that  
6 you have had the opportunity, if you wanted, just say  
7 the word, and you could transfer, if you want to?

8 A Transfer, what do you mean?

9 Q You could leave this campus if you want to and  
10 go work at Autauga, for example? You know that?

11 A Why would I want to go work at Autauga?

12 Q I didn't ask you that. On one hand, it is  
13 your testimony that the people here mistreat you so  
14 badly that you have had to have all kinds of treatment  
15 and therapy and everything else, and now you want a lot  
16 of money, and you also know, on the other hand, that you  
17 have the opportunity, if you want, to go work somewhere  
18 else? That is your choice?

19 A I have not done anything to anyone.

20 Q No. No. You understand that, don't you?

21 A I do understand that.

22 Q Right. I really am curious about that. And I  
23 have got to tell you, unless I was trying to just figure

1 out a way to say, "You have got to pay me some money,"  
2 if I was really being mistreated by my co-workers, I  
3 would want to go somewhere else if I could. I don't  
4 understand why you don't. Can you answer that?

5 A Yes, I can. I have done nothing wrong. I  
6 have told the truth. I was asked to tell the truth. I  
7 did that. I have done nothing to anyone. I don't feel  
8 like I should have to go to Autauga because someone else  
9 wants me to.

10 Q So do you think all of your co-workers ought  
11 to be sent to Autauga?

12 A No. I didn't say that.

13 Q I know you didn't. So what is the answer?

14 A I have done nothing wrong.

15 Q What is the answer?

16 A I shouldn't have to --

17 Q What is the answer? What is it that you --

18 MR. JACOBS: Would you stop badgering her?

19 Q What is it that the department did wrong?

20 A Letting this go on for so long without  
21 stopping it.

22 Q What is the answer?

23 A Maybe better training. Maybe --

1 Q Better than bringing out the attorney general  
2 or a representative from the attorney general's office?

3 Better than that?

4 A I had no knowledge of that until recently.

5 Q What else?

6 A I think Mr. Lee needs some management  
7 training.

8 Q What else?

9 A And the rest of us could use some sensitivity  
10 training towards ourselves and towards the students.

11 Q So training, you think? You think we can  
12 train your co-workers and they are going to like you  
13 better?

14 A It doesn't matter to me that they don't like  
15 me. You can not like a person but treat them with  
16 respect and dignity.

17 Q The incident where Mr. Hardy came to your  
18 house and Ms. Harris was there, this was after Christmas  
19 2005; correct?

20 A 2004.

21 Q 2004?

22 A Yes.

23 Q And you and Ms. Harris had been to Toys "R"

1 Us; right?

2 A Yes, sir.

3 Q This was a Saturday?

4 A Yes, sir.

5 Q The very next Saturday after that Christmas?

6 A I guess.

7 Q And you were having drinks at your house?

8 A Yes, sir.

9 Q The next day was a work day for you; right?

10 A Yes, sir.

11 Q Mr. Hardy called you on the phone, and after  
12 you had been home for about ten minutes, he showed up;  
13 right?

14 A I'm not exactly sure how many minutes it was.

15 Q Do you remember testifying in the hearing on  
16 Michael Hardy on May 8th that, roughly, maybe about ten  
17 minutes went by?

18 A Roughly.

19 Q You remember that?

20 A Roughly. I don't know exactly how many  
21 minutes.

22 Q And you had a couple of drinks?

23 A That night, not before he got there.

1 Q Not obviously in the ten minutes before he got  
2 there?

3 A Exactly.

4 Q And when he showed up, what you were drinking  
5 were Long Island Teas?

6 A No. She and I were drinking Belvedere.

7 Q Belvedere?

8 A Vodka.

9 Q You just happened to have some Long Island Tea  
10 at the house?

11 A Yes.

12 Q How frequently do you drink Long Island Tea?

13 A Whenever I get the taste for it.

14 Q How frequently?

15 A I don't know.

16 Q Do you have any now?

17 A Do I have any now? I don't have anything  
18 now.

19 Q When is the last time you had Long Island Tea  
20 in your house?

21 A I don't know. Sometime in 2005, probably.

22 Q Now, he knocks on the door, and you knew it  
23 was he; correct?

1           A    No, not necessarily. Because I told him when  
2           he got to the sign to call me and I would give him  
3           directions.

4           Q    But he told you he already knew where you  
5           lived; right?

6           A    No. He didn't tell me that.

7           Q    But you knew he already knew?

8           A    Well, obviously. He was the one who was  
9           knocking on the door.

10          Q    And you didn't go to the door; Ms. Harris went  
11          to the door?

12          A    She did.

13          Q    Why would you invite him in your house? If  
14          this man has done all of these terrible things to you,  
15          why would you let him in your house?

16          A    I didn't want him to think I was mad with him.  
17          I was trying to get along, trying to keep my job. Just  
18          trying.

19          Q    Now, he's snuck up behind you, grabbed your  
20          breasts?

21          A    Yes, sir.

22          Q    He has asked you for oral sex?

23          A    Yes, sir.



1 Q And he is coming to your house, and you just  
2 invite him right in because you don't want him to be  
3 mad?

4 A No, I did not want him to be mad.

5 Q You didn't think about going outside?

6 A Did I think about going outside?

7 Q Yes, instead of inviting him in.

8 A No, sir, I did not. Because we weren't there  
9 alone; Ms. Harris was there, too.

10 Q So you invited him in --

11 A No. She answered the door and invited him in.

12 Q And he asked you to use the restroom?

13 A He did.

14 Q And, then, when he came back, you asked him to  
15 sit down?

16 A Yes.

17 Q And, then, you sat down there with him?

18 A Yes, I sat there.

19 Q And y'all chitchatted?

20 A We all did.

21 Q And at that point, Ms. Harris left y'all  
22 alone, didn't she? You were sitting there in your  
23 living room, or whatever room that is, with this man who

1 has done these things to you and y'all are drinking  
2 alcohol on the Saturday after Christmas?

3 A He wasn't drinking at that point.

4 Q Well, so good point.

5 Ms. Harris, who is your childhood friend and knows  
6 about what is going on, leaves you alone with this man?

7 MR. JACOBS: Object to the form of the  
8 question.

9 Q Right? I understand that correctly, don't I?

10 A We weren't alone, because Ms. Harris was in  
11 the kitchen. The kitchen and the den are connected.

12 Q So she leaves you and goes to the other room  
13 so you are in the room alone with Mr. Hardy?

14 A She went to make her another drink.

15 Q And you volunteer and offered that man a  
16 drink?

17 A Yes.

18 Q And it just so happens that the only drink  
19 that he enjoys you happened to have in your house at  
20 that time?

21 A Yes, sir. I didn't know he even drank.

22 Q So he is drinking. You are drinking. Y'all  
23 are alone. And y'all continued to chat?

1 A The three of us, yes.

2 Q The three of you?

3 A Yes.

4 Q Now, Ms. Harris had left y'all alone?

5 A The kitchen and den are connected.

6 Q I understand. So she is drinking in the other  
7 room; y'all two are in this room drinking?

8 A No. She was putting the presents in boxes and  
9 putting some paper on them.

10 Q But she was in a different room?

11 A With no door.

12 Q Your house has two rooms with an open --

13 A Yes.

14 Q Then he did some really strange things and  
15 raised his shirt and asked you to lick his chest; right?

16 A Yes, sir.

17 Q But, now, Ms. Harris, she didn't see that;  
18 right?

19 A Yes. She saw him with his shirt up. That is  
20 why she asked me if I wanted her to leave.

21 Q And in your affidavit there, I think you  
22 changed what you said.

23 A What did I say?

1 Q In your affidavit you said you said, "Hell  
2 no," but what you really said was, "Hell, fucking no"?

3 A "Hell mother-fucking no." I didn't want to be  
4 so vulgar, but yes.

5 Q But that is what you said?

6 A Yes.

7 Q I am not saying it to be vulgar either, but  
8 that is what you said you said?

9 A Yes, sir. That is what I said.

10 Q Now, I got that right; correct? I understand  
11 that situation and what happened?

12 A Yes.

13 Q Now, even after this, you still didn't intend  
14 to complain about him, did you?

15 A No, sir.

16 Q But, now, you did eventually complain, and at  
17 the time you talked to Phyllis Rankins, we have  
18 established the day -- what was the date?

19 A June 16th.

20 Q June 16th or June 25th?

21 A June 16th.

22 Q On that date when you went to see Phyllis, you  
23 didn't go to see Phyllis for the purpose of complaining

1 about Michael Hardy, did you?

2 A No, sir.

3 Q You went to see Phyllis because you were going  
4 to try to get her to help you get transferred to a  
5 different dorm?

6 A Yes, sir.

7 Q And ITU was one of the dorms you wanted to be  
8 transferred to?

9 A No. I didn't specify a dorm to her.

10 Q I will come back to that.

11 Now, when you talked to Ms. Rankins, Ms. Rankins,  
12 you do know she did exactly what she was supposed to do?  
13 You would agree with that, wouldn't you?

14 A Now I do, yes.

15 Q You knew it at the time? You were aware of  
16 the policy at the time?

17 A I didn't want any backlash.

18 Q I understand that. That is not my question.

19 When you told Ms. Rankins that Michael Hardy had  
20 made advances to you of a sexual nature, you do agree  
21 with me that Ms. Rankins did exactly what she should  
22 have done pursuant to DYS policy?

23 A Yes.

1 Q She did what she was trained to do and she did  
2 what she should do and sent you straight to personnel,  
3 didn't she?

4 A She did.

5 Q And she even called personnel and followed up  
6 on that, didn't she, while you were here?

7 A She called me to tell me where to go that  
8 night.

9 Q And, therefore, knew you were in there,  
10 because she spoke with you on the phone?

11 A Yes, she did.

12 Q Now, everything that you said that made this  
13 -- Your belief of the power of Michael Hardy was the  
14 reason you say you didn't complain before?

15 A Yes.

16 Q And the reason you say you were so afraid?

17 A Yes, sir.

18 Q But it is a fact that Phyllis Rankins said to  
19 you that he wasn't that powerful, didn't she?

20 A She said, "You think he is invincible, don't  
21 you?" And I said, "Yes, ma'am." She said, "Well, he is  
22 not, and I am going to show him the power of Phyllis  
23 Rankins."

1 Q She made it absolutely clear that she would  
2 protect you, didn't she?

3 A No, sir. She sent me to personnel.

4 Q Now, Phyllis then called you -- What you had  
5 wanted from Phyllis was a transfer to a different dorm;  
6 right?

7 A Yes, sir.

8 Q And then she called you and told you to go to  
9 a different dorm?

10 A She did.

11 Q She did exactly what you asked her to do,  
12 didn't she?

13 A She did exactly what I wanted to do to get  
14 away from him.

15 Q Now, you have said or your lawyer has said, or  
16 maybe it was in your statement here, that you were tired  
17 and beat down and that you had worked previously that  
18 day and then you had to work another shift that same  
19 night. Now, are you complaining or suggesting that -- I  
20 know you are not complaining about Phyllis Rankins,  
21 because we covered that.

22 Are you suggesting in your affidavit that Phyllis  
23 Rankins mistreated you?

1 A Mistreated me?

2 Q Yes.

3 A To have me working eight days in a row?

4 Q No, to have you go -- I think you went to  
5 Trustee that night?

6 A I did.

7 Q To have you go to Trustee that night? You  
8 wanted to get out of that dorm immediately. Did you say  
9 to her, "I don't want to work tonight"?

10 A Of course not.

11 Q Because you wanted to go out of that dorm and  
12 go somewhere else, didn't you?

13 A I wanted to keep my job. After I told her  
14 what had happened, I knew it wouldn't be long before  
15 everybody else knew. I wanted to do everything that I  
16 needed to do.

17 Q Here's the point. You don't really have a  
18 problem with Phyllis Rankins having immediately sent you  
19 to work the next shift to go work at Trustees Hall, do  
20 you?

21 A I didn't have any say in it. I just did it.

22 Q That is not my question.

23 A Yes, I should have been off, but I wasn't



1 going to tell her, no, I am not going to do it.

2 Q Did she even know when your previous shift had  
3 been?

4 A I don't know.

5 Q You don't have any reason to think that she  
6 did know that, do you?

7 A I don't know.

8 Q You wanted to immediately go to another dorm  
9 and she did that, didn't she?

10 A She did that.

11 Q And you didn't tell her, Look, I just got off  
12 another shift, put me on another shift? You didn't say  
13 anything like that, did you?

14 A No, I did not. Whatever she would have told  
15 me to do, I was going to do.

16 Q Now, what is it -- you just said something  
17 about working eight days. What are you talking about?

18 A I did.

19 Q When?

20 A I got off that morning. I went to work that  
21 night. I went to work the next night, the next night.

22 Q So you had eight days on after that?

23 A In order to be off on my off days, which were

1 Sunday and Monday.

2 Q Sunday, Monday were your off days?

3 A They became my off days.

4 Q When did they become your off days?

5 A When I went to ITU.

6 Q I see. How many days did you actually work at  
7 Trustee?

8 A One.

9 Q And then you went to ITU the very next night?

10 A I think so. I am not for sure.

11 Q Okay. So you went to ITU -- Do Trustee and  
12 ITU have the same shifts?

13 A I don't know.

14 Q So after you went to Trustee, you went to ITU  
15 and then you worked until Sunday came around and then  
16 you got --

17 A Until Sunday morning.

18 Q So as a result of you going to Trustee, the  
19 effect was that you worked eight days? Am I correct?

20 A For me going to Trustee?

21 Q Right. Because you worked at Trustee for at  
22 least one day?

23 A Yes. I worked there one day and the rest of

1 the days were at ITU.

2 Q And as soon as your regular off day came  
3 around --

4 A My regular off day was that morning that I  
5 went to see Ms. Rankins.

6 Q And Ms. Rankins sent you to Trustee that  
7 night?

8 A Yes.

9 Q Did your regular off days change? When you  
10 were at, I guess it was Paige, the day that you went to  
11 see Ms. Rankins, were your off days at that time Sunday  
12 and Monday?

13 A No.

14 Q What were your off days?

15 A I think they were Thursday and Friday. I  
16 don't know. If I am not mistaken, it was Thursday and  
17 Friday, but I am not sure. Whatever day that was  
18 started my off day.

19 Q So, essentially, the result of asking for a  
20 change to a different dorm, you worked eight days and  
21 then when your regular off days came up, you began  
22 taking those off days as they came around; correct?

23 A Yes.

1 Q Now, you don't suggest that Ms. Rankins did  
2 that to punish you for having filed a complaint against  
3 Michael Hardy?

4 A I don't know what Ms. Rankins was thinking.

5 Q You don't?

6 A I should hope not.

7 Q I mean, you know better than that. She sent  
8 you straight to personnel. She said to you, I will show  
9 you he is not invincible, and then she did, didn't she?

10 A Eventually, yes.

11 Q So you are not suggesting that Phyllis Rankins  
12 somehow mistreated you or did something to you because  
13 you filed this complaint against Michael Hardy? The  
14 opposite is true, isn't it? She did something to  
15 Michael Hardy?

16 MR. JACOBS: Object to the form of the  
17 question.

18 Q Isn't that true?

19 MR. JACOBS: Object to form.

20 A I don't know what she did to Mr. Hardy, but I  
21 had to work those eight days.

22 Q You are not suggesting that having to work  
23 those eight days was some kind of punishment, are you?

1 A In this environment, it is hard to say.

2 Q Well, let me ask it another way. What  
3 evidence do you have to suggest that you had to work  
4 eight days because you complained against Michael Hardy?

5 What can you tell me that could possibly lead to  
6 that conclusion?

7 A I don't know.

8 Q Do you blame that on anybody, for example?  
9 Was it somebody's fault?

10 A I guess somebody should have been keeping up  
11 with it.

12 Q I didn't ask you that. Is it your testimony  
13 that somebody, in particular, is at fault for that? Or  
14 are you just saying that that happened, so, therefore,  
15 it must be because I complained against Michael Hardy?  
16 Is that what you are saying? Are you suggesting there  
17 might really be a basis to believe that?

18 MR. JACOBS: Object to the form of the  
19 question.

20 A I don't know, Mr. Perry.

21 Q Don't know what?

22 A Whether it has something to do with that or  
23 not.

1 Q You say in your affidavit that you have since  
2 learned about additional retaliatory actions. What are  
3 you talking about?

4 A Those memos that he wrote, I had no idea about  
5 them. Those write-ups, I didn't know.

6 Q What write-ups?

7 A That my co-workers were writing. I didn't  
8 know they were doing that.

9 Q What else?

10 A I didn't know -- I believe I would have been  
11 more guarded if I had known that you would be asking me  
12 these questions today.

13 Q What do you mean?

14 A Previously.

15 Q I don't understand what that meant. You would  
16 had been more guarded about what? When?

17 A If I had known then that you were going to be  
18 the one here asking me these questions.

19 Q My question was what additional retaliatory --  
20 You said in your affidavit that you have since learned  
21 about additional retaliatory actions. And the reason I  
22 am asking you this is, because that is an open-ended  
23 statement. I am aware of a lot of facts in this case.

1 I need to be aware of all the things that you are saying  
2 somebody did to retaliate against you because you  
3 complained about Michael Hardy, and I know that you have  
4 said the memos and the write-ups from your co-workers.  
5 So what else?

6 A The lowering of my evaluation. I think that  
7 had to do with the situation.

8 Q You are talking about when you got a 25  
9 instead of the 27 that you had gotten before?

10 A Yes, sir.

11 Q And the reference to the failure to attend  
12 that training session?

13 A I went to training, sir.

14 Q I am sorry. You went to training?

15 A Yes, sir.

16 Q Now, I am pretty sure that in your affidavit  
17 you said -- I may be wrong about this -- that you  
18 weren't told about that training?

19 A The trainings that I was told about, I went to  
20 them. If I wasn't told about it, then I couldn't have  
21 been there. But the ones that I was told about, I  
22 always went to training, the ones that I knew about.

23 Q You do know there is an "A" and a "B"; right?

1 A Yes.

2 Q A mandatory "A" and a mandatory "B"? Right?

3 A Yes.

4 Q You knew at the time that you did not have  
5 both "A" and the "B," didn't you?

6 A No, sir, I did not know that.

7 Q How could you not know it?

8 A He said he had a make-up training.

9 Q Had a what?

10 A He said that he had a make-up training and  
11 that is why he wrote me up.

12 Q Right.

13 A But I had thought I had gone to all of the  
14 trainings that were posted for me to go to.

15 Q You knew that you didn't have your mandatory  
16 training?

17 A He said that I didn't go to training.

18 Q No. I am sorry. Answer my question. You  
19 knew that you did not have your mandatory training,  
20 didn't you?

21 A For 2006?

22 Q During the time period that you are claiming  
23 that your evaluation was lowered to a 25.



1           A    It was supposed to have been 2005. That is  
2           when he said I didn't go to training; not 2006.  
3           January, that is the beginning of the year. It starts  
4           over in January.

5           He wouldn't have had a make-up in January of 2006,  
6           because it starts over in January.

7                       (Thereupon, a break was taken.)

8           Q    We were talking about the write-up that you  
9           got for not attending training.

10          Now, you told Mr. Staton that you had attended your  
11       training; right?

12          A    Yes, sir.

13          Q    But you say here in your affidavit that you  
14       were written up for not attending training that you were  
15       not told about?

16          A    I attended all of the training that I was  
17       supposed to go to.

18          Q    No, you didn't. You did not have your "A" and  
19       your "B," and you know that, don't you?

20          A    No, sir.

21          Q    Do you not know how much training you have  
22       had, on a year-to-year basis? Each year you are  
23       required to get "A" and "B"; right?

1 A Forty hours.

2 Q And are you telling me that you don't know at  
3 any time how much training you have had? You just say,  
4 if somebody says go train, you go train, but you don't  
5 keep up with it? You don't know how much you have had?

6 A Honestly, then, no, I didn't.

7 Q Period? You didn't know how much training you  
8 had had?

9 A No.

10 Q You are aware and you have been aware, it has  
11 always been the policy, that it is required, to continue  
12 to work here, if you want to keep your job, you have to  
13 get that mandatory training every year? You know that?

14 A Yes, sir.

15 Q That is a requirement for you to keep your  
16 job?

17 A Yes, sir.

18 Q And you are sitting here telling me under oath  
19 that you didn't know how much training you had; you just  
20 went when somebody said go get training and you would go  
21 and get trained?

22 A No. Somebody else schedules me for training,  
23 sir.

1 Q That is not what I asked. You are telling me  
2 under oath that you never knew how much training you had  
3 already gotten?

4 A At that time, I thought I had all of my  
5 training.

6 Q You know now that you did not, don't you?

7 A No, sir, I don't know that.

8 Q You don't?

9 A No, because I still think that I went to all  
10 of my training.

11 Q Why do you say here, unlike you said to Mr.  
12 Staton, you say in this affidavit that you weren't told  
13 about the training?

14 A About which training?

15 Q You don't say that you attended it. You say  
16 you didn't attend it because you weren't told?

17 A If there was another training, I wasn't told.

18 Q Why did you change what you said? Why did you  
19 change your complaint?

20 A I didn't change it, because I feel like I did  
21 go to my training. But if there was another training, I  
22 wasn't made aware of it.

23 Q It is true that Mr. Lee simply posts notices

1 of the training, isn't it?

2 A To my knowledge, yes.

3 Q And the other employees whose names were put  
4 on that board, they attended the training, didn't they?

5 A Whose names were put on the board?

6 Q Right. You were the only employee who did not  
7 attend that mandatory training session, weren't you?

8 A I don't know.

9 Q Now, is it your testimony that you were  
10 reprimanded in connection with this training issue?

11 A He tried to.

12 Q He tried to reprimand you?

13 A Yes. I don't know if it was for that or not,  
14 but he tried to.

15 Q You know the difference between a reprimand  
16 and a warning, don't you?

17 A Yes.

18 Q What is the difference?

19 A The reprimand is when they take seven points  
20 off of your next score.

21 Q Take seven points off, don't they?

22 A Yes, sir.

23 Q Necessarily knocks you out of a pay raise,

1 doesn't it?

2 A I am sure most times it can.

3 Q A warning does not, does it?

4 A I don't think so.

5 Q Now, this was in December of 2005; correct?

6 A When?

7 Q This reprimand for training, you attached it  
8 to your summary judgment response as Exhibit 22?

9 A I guess.

10 Q And that is what we are talking about, isn't  
11 it, this business about the 25 that you received on your  
12 evaluation?

13 A Is this when he gave me the letter of warning?

14 Q Yes. That is my question.

15 A That is your question?

16 Q Yes.

17 You say you are complaining about your evaluation;  
18 right?

19 A Yes.

20 Q That is your testimony, isn't it?

21 A Yes. I think I also complained to you about  
22 it.

23 Q To me?

1 A Yes, sir.

2 Q You mean Mr. Staton?

3 A No. You told me as long as he didn't take any  
4 money from me, I shouldn't worry about it. I was in  
5 control force training at the time, and I saw you on the  
6 steps.

7 Q Did he take any money from you?

8 A No. I didn't get a demotion in pay.

9 Q Somewhere, I remember you had said, either in  
10 your complaint or in your affidavit, that you have been  
11 denied pay raises or money; is that true?

12 A He didn't give me a raise. I think he had on  
13 there something about punctuality, and not getting  
14 along --

15 Q Because you were late three times?

16 A Correct.

17 Q But you were late three times?

18 A Yes, but there were other people who were late  
19 more than three times.

20 Q And you got a 28 when he scored you for being  
21 late three times, didn't you?

22 A When he scored me for being late three times?

23 Q Yes. Isn't that correct?

1 A Yes. This is what I was saying about --

2 Q You are looking at something with your lawyer.

3 What is it that you are looking at?

4 MR. JACOBS: It is Exhibit 13 you have in your

5 book. It is an evaluation. This one

6 says 2006. It is the wrong year.

7 Q What does it say right there?

8 A Late three times. This is the correct one.

9 MR. JACOBS: I am sorry.

10 Q You got a 28 on that one, didn't you?

11 A Yes.

12 Q You didn't lose any pay raise, did you?

13 A No.

14 Q So what are you talking about?

15 A I got one for --

16 Q You got one for?

17 A The 25 one, do you have a copy of that?

18 Q I have it.

19 You got a pay raise for that too, didn't you?

20 A I did. What do you get for that? A one step?

21 Q You got a step raise, didn't you?

22 A A one step?

23 Q Yes. Didn't you?

1 A Yes.

2 Q And this was the period of time during which  
3 you failed to attend mandatory training, among other  
4 things; correct?

5 A I don't remember. May I see it?

6 Q Yes, ma'am.

7 A Thank you. I think this is the one that he  
8 wanted to give me the reprimand on that Ms. Rankins  
9 wrote me a letter about. It says, Refused to sign. See  
10 attached.

11 Q I guess that would be my question to you.

12 A Well, there is nothing attached.

13 Q You are talking about the refused to sign  
14 part, where it says, "see attached"? What were you  
15 pointing to that says "see attached"?

16 A It was supposed to be attached.

17 Q I am asking you: What are you referring to  
18 that says attached?

19 A It says, See attached.

20 Q Right here, it says, "Refused to sign. See  
21 attached."

22 You refused to sign that, didn't you?

23 A Of course.



1 Q Of course?

2 A Yes, I didn't agree with it.

3 Q You do know that the personnel department will  
4 uphold termination of state employees for refusing to  
5 sign their performance appraisals, don't you?

6 A Ms. Spann told me that if I didn't agree with  
7 it, I didn't have to sign it.

8 Q Ms. McMillian, was that an answer to my  
9 question? You do know that the state personnel  
10 department will uphold termination of employees if an  
11 employee refuses to sign their performance appraisal,  
12 don't you?

13 MR. JACOBS: Object to the form of the  
14 question.

15 A In certain departments, yes. This isn't  
16 one --

17 Q In any department?

18 A In this department too?

19 Q If this department did it. You are aware that  
20 you are required to sign your performance appraisal,  
21 aren't you?

22 A I was told by human resources that I didn't  
23 have to sign it.

1 Q You were told by DYS Human Resources; right?

2 A Yes.

3 Q Did you call state personnel?

4 A Did I call them?

5 Q Yes.

6 A I didn't feel like I should have to call them  
7 after I went to human resources.

8 Q You do know that it is a rule that you are  
9 required to sign this, don't you?

10 A No, sir, but he did show a tape that he  
11 brought in.

12 Q You don't know that that is a rule?

13 A No, I did not know that it was a rule, because  
14 when I went to personnel, they told me --

15 Q Isn't it a fact that Mr. Lee intended to  
16 discipline you for failing to sign this?

17 A I didn't know that.

18 Q Then why were you talking to Ms. Spann?

19 A Because I had gotten the 25, and I didn't  
20 think that I deserved a 25.

21 Q You weren't talking to Ms. Spann about -- You  
22 didn't just tell me that you were talking to Ms. Spann  
23 about refusing to sign and understanding, at this

1 agency, this agency won't take action against you for  
2 refusing to sign?

3 A That came up --

4 Q You didn't just say that?

5 A That came up --

6 Q No, ma'am. Did I not understand that you just  
7 said that?

8 MR. JACOBS: You are badgering her. If you  
9 want her to answer, give her time to  
10 answer.

11 MR. PERRY: She needs to answer my question  
12 and stop arguing with me.

13 Q Just please answer the question I asked and  
14 don't give an excuse for why. She is making a record,  
15 and when I ask you a question, I have to get an answer  
16 to it, and then you can explain something or ask me.  
17 But answer my questions.

18 I clearly understood that you had a conversation  
19 about the fact that you had refused to sign this  
20 performance appraisal. You had that conversation with  
21 Ms. Spann, didn't you?

22 A Yes, I spoke with her about that.

23 Q Because Mr. Lee understood correctly that it

1 is against the rules to fail to sign this thing; isn't  
2 that true?

3 A I don't know what Mr. Lee understood.

4 Q You do know that it is correct that it is a  
5 state rule that you are required to sign this, don't  
6 you?

7 A I did not know that at the time.

8 Q Well, you learned it, didn't you?

9 A When he brought the tape in.

10 Q What tape?

11 A I don't know. It was a tape of a lady giving  
12 instructions about performance appraisal.

13 Q And the tape said you have to sign them?

14 A The tape said that.

15 Q So he taught you that?

16 A That was after that.

17 Q So what money did you lose?

18 A What money did I lose?

19 Q Yes, ma'am.

20 A It wasn't about losing money. No money.

21 Q Thank you.

22 You haven't lost any money in connection with any  
23 of this, have you?

1 Any of the things that you are claiming, you  
2 haven't lost any money in connection with any of this,  
3 have you?

4 A I have lost things that are more valuable than  
5 money.

6 Q Please answer my question.

7 A I am sorry.

8 Q You haven't lost any money in connection with  
9 any of this, have you?

10 A I could have gotten more money --

11 Q No. No.

12 A Yes, I have lost money.

13 Q What money have you lost?

14 A If he had not given me a 25, I could have  
15 gotten more money.

16 Q You could have gotten two steps if your  
17 performance appraisal had been higher?

18 A Yes, sir.

19 Q And on what basis do you understand that this  
20 25 was given? Doesn't it say here "compliance with  
21 rules is unsatisfactory"?

22 A What rules was I not complying with?

23 Q That is my question: You understand what that

1 is about, don't you?

2 A No, sir. I was complying with the rules of  
3 DYS.

4 Q Except that you didn't have your mandatory  
5 training, did you?

6 A Yes, sir, to my knowledge, I had all of the  
7 mandatory training I was supposed to have.

8 Q And this was during the period of time which I  
9 think you just testified that you didn't know how many  
10 hours you had? Did I understand that correctly?

11 A I didn't count up the hours. I just went by  
12 what I was supposed to go to.

13 Q So on what basis can you possibly give  
14 testimony under oath here today in contradiction to what  
15 you previously said, that you did, in fact, have all of  
16 your mandatory training?

17 A I had all of my mandatory training.

18 Q On what basis can you say that? You say on  
19 the one hand, you didn't know how much you had, and now  
20 you say you had it all. How can you say that? What  
21 facts do you base that on? Any? Or is it just you say  
22 it --

23 MR. JACOBS: Dudley, she has answered that

1 question about five times. You are  
2 arguing with her because you are not  
3 getting the answers you want.

4 Q What facts are you aware of to conclude that  
5 you did have all of your training?

6 A The fact that I know that I went to the  
7 training, sir.

8 Q What training did you go to?

9 A All of the training that I was scheduled to go  
10 to.

11 Q Anything else? Any other facts? Any?  
12 If there is, you can say so.

13 A I went to all of the training that I was  
14 scheduled to go to that I knew about.

15 Q You have already said that. I asked you if  
16 there is any other facts. You can say no.

17 A I don't know if there are any other facts  
18 because I haven't gone down there to research.

19 Q Well, Mr. Staton did, because you told him you  
20 did have it all. Now, in your affidavit, you say, you  
21 weren't told.

22 A If I didn't go to one, I wasn't aware of it.

23 Q Now, in your affidavit, you say that he has

1 asked you on a daily basis to suck his "D." That is not  
2 true, is it?

3 A Everytime I was in his presence, there was  
4 something sexual in nature.

5 Q Let me ask the question again: In your  
6 affidavit, you say that he has asked you on a daily  
7 basis to suck his "D"?

8 A At some points, yes.

9 Q You said that in your affidavit; right?

10 A Yes.

11 Q That is not true, is it?

12 A Yes, sir.

13 Q Then why did you testify previously --

14 MR. JACOBS: Dudley, would you identify where  
15 in the affidavit that is?

16 Q It is not in your affidavit. It is in your  
17 EEOC charge, which is also an affidavit.

18 MR. WILSON: It is page 2 of the charge of  
19 discrimination.

20 Q The charge of discrimination on 7/12/05.

21 I have just shown you what your lawyer has attached  
22 as Exhibit 3 to your response to the summary judgment  
23 motion?



1 A Yes, sir.

2 Q You have seen that, haven't you?

3 A Yes, sir.

4 Q That is your signature on that?

5 A Yes, sir.

6 Q And you swore to that document, didn't you?

7 A Yes, sir.

8 Q Do you see where you say that on an almost  
9 daily basis he asked you to suck his "D"?

10 A Yes, on an almost daily basis.

11 Q That is not true, is it?

12 A That is true, sir.

13 Q You remember giving your testimony on May the  
14 8th of 2006 in the Michael Hardy case, don't you?

15 A I remember being down there.

16 Q Do you remember being asked about Mr. Hardy  
17 asking you for oral sex?

18 A Do I remember it?

19 Q Yes. Do you remember being asked about that?

20 A No, but I am sure I was asked.

21 Q You said, Well, he didn't ask me for oral sex.

22 Let me just show you your testimony on page 75. Look at  
23 that and refresh your recollection.

1 And he asked you: Did you have any more  
2 discussions about that subject? Do you remember that?

3 A This says he didn't actually say oral sex.

4 Q Right. Because what he actually said was suck  
5 his "D"?

6 A Yes.

7 Q That's right, isn't it?

8 A Yes.

9 Q That is what you were saying, isn't it?

10 A Yes.

11 Q You said here, No, he didn't ask me to do that  
12 anymore, and then you went on?

13 A I don't know. When we did this, I had not  
14 slept, no break.

15 Q I beg your pardon?

16 A But this is true.

17 Q What is true?

18 A I see that this is in here.

19 Q Right.

20 And that is different from what your affidavit  
21 says, isn't it?

22 A That is different.

23 Q Because that happened one time, didn't it?

1 A No, sir.

2 Q So now you are back to saying it did happen  
3 more than once?

4 A "You were talking about the day when he asked  
5 you for oral sex, and you said, no, and y'all went  
6 outside. Did you have any more discussions about this  
7 subject outside?"

8 Outside, meaning outside the dorm, I think.

9 Q And he said, "Or anywhere"?

10 A Or anywhere.

11 Q What you are trying to say is that now, once  
12 again, you are back to saying, yes, it happened more  
13 than once?

14 A It did.

15 Q Tell me about that.

16 A Mr. Perry, this happened a lot. I can't give  
17 you any instances or dates.

18 Q I notice here in your affidavit, which you  
19 have submitted as Exhibit 1, you say, in paragraph 4,  
20 Mr. Hardy requested on one occasion that I, quote, suck  
21 his "D." Is that true?

22 A Yes, he asked me to do that.

23 Q On one occasion?

1           A    No. I think you may be reading that the wrong  
2   way.

3           Q    You think?

4           A    On one occasion, meaning I am telling about an  
5   incident.

6           Q    Read that first sentence on paragraph 4.

7           A    Mr. Hardy on one occasion requested that I  
8   suck his... yes. That doesn't mean that it happened  
9   more than once.

10          Q    Which is true?

11          A    I meant that Mr. Hardy, on one occasion,  
12   requested.

13          Q    This was the last, most recent statement that  
14   you have given about these incidents; right?

15          A    Yes, sir.

16          Q    Let's turn quickly to a different subject.

17          You are familiar with the DYS policy on sexual  
18   harassment, aren't you?

19          A    Yes.

20          Q    You are?

21          A    Yes.

22          Q    You were trained on that policy early in your  
23   employment, weren't you?

1 A In the first year of my employment, yes.

2 Q And throughout the time that Michael Hardy was  
3 interacting with you in a sexually inappropriate way,  
4 you were familiar with that policy?

5 A Yes.

6 Q And you knew that the policy said that you  
7 should go and complain to personnel?

8 A Yes.

9 Q You had a copy of that policy with you?

10 A With me?

11 Q Yes. At that time, didn't you?

12 A Where?

13 Q You had in your possession during that period  
14 of time that policy?

15 A They have a policy book in the dorm.

16 Q And you actually physically went through that  
17 policy and you had actually physically been over that  
18 policy yourself in the dorm?

19 A Yes, sir, when I was in Holloway Hall, I did.

20 Q And, again, you had had training on more than  
21 one occasion, actually, on that policy?

22 A Yes.

23 Q And there was no doubt in your mind, was

1     there, that your procedure would be to go and complain  
2     about that to Debra Spann?

3         A     Sir, I didn't want to start any problems.

4         Q     I didn't ask you that. There was not any  
5     doubt in your mind what the policy was and what you were  
6     to do?

7         A     Yes. I knew what the policy was.

8         Q     And you chose not to do anything about it?

9         A     I chose to keep my job.

10        Q     You still have your job now. You chose not to  
11     complain and follow that policy, didn't you?

12        A     I chose to keep my job, sir.

13        Q     How is that an answer to my question? You  
14     subsequently were forced to follow that policy, weren't  
15     you?

16        A     Yes.

17        Q     And you are sitting here with a job, aren't  
18     you?

19        A     Yes.

20        Q     And the fellow you complained about is not, is  
21     he?

22        A     Well, I don't know if he has a job or not.

23        Q     He doesn't have a job here, does he?

1 A No.

2 Q So hold that thought. Why do you sit here and  
3 argue with me and refuse to answer my question and say  
4 simply, I chose to keep my job? You chose not to follow  
5 the policy, didn't you?

6 A I chose not to follow the policy because I was  
7 afraid.

8 Q Fine.

9 At the time you made that complaint, you talked  
10 with Phyllis and then you went to see Debra, you were  
11 working the twelve to eight shift at that time?

12 A Yes, sir.

13 Q Now, Mr. Hardy claims, as you know, that you  
14 made this allegation because you knew that it would get  
15 sent up and because you wanted to be able to work a  
16 different shift. You remember that; right?

17 A That that is what he said?

18 Q Yes. You do remember that that was his claim;  
19 right?

20 A I didn't have privilege to the things Mr.  
21 Hardy had said.

22 Q Let me ask you this: I know that at the time  
23 you made that complaint, you were not working at

1 Hanilehwa?

2 A No, sir.

3 Q But you subsequently did take a job at  
4 Hanilehwa?

5 A Yes, sir.

6 Q And it is a fact that if you had continued to  
7 work the shift that you were working at the time you  
8 made that complaint, you would not have been able to  
9 work that job at Hanilehwa?

10 A No, I wouldn't.

11 Q Because the shifts overlapped, didn't they?

12 A Exactly.

13 Q ITU is one of the few dorms that has a shift  
14 that ends at six in the morning; correct?

15 A Yes, sir.

16 Q I think maybe CAPS has that shift too; right?

17 A I'm not for sure. Hanilehwa wasn't  
18 established at that time.

19 Q When you went up to see Ms. Spann, you were  
20 not afraid to talk to her, were you?

21 A No.

22 Q And within two weeks of doing that, you had  
23 already hired a lawyer to represent you to sue this



1 department?

2 A It was two weeks?

3 Q I am asking you. Isn't that true?

4 A I don't know how long it was.

5 Q Is that about right?

6 A I don't know how long it was, sir.

7 Q Pretty short period of time, wasn't it?

8 A It was a pretty short time when they started  
9 to whacking in on me.

10 Q Now, let's back up. You previously testified  
11 that all the way back in 2003, you began seeing health  
12 care professionals because of Michael Hardy?

13 A Yes.

14 Q So that had been happening since 2003, and you  
15 hadn't told anybody, had you?

16 A No, sir, I hadn't.

17 Q Because it was your testimony that you were  
18 afraid?

19 A I was and I still am.

20 Q Well, you weren't when you talked to Ms.  
21 Spann, were you?

22 A No, I wasn't. She made me feel comfortable.

23 Q And until you talked to Ms. Rankins about a

1 transfer, the only people you had talked to were, first,  
2 Derrick Bolling and then Michael Hardy, right, about a  
3 transfer?

4 A Yes.

5 Q And, in fact, you understood that there were  
6 openings available at ITU when you talked with Mr.  
7 Bolling, didn't you?

8 A From Mr. Hood.

9 Q And that was on the two to ten shift?

10 A Yes.

11 Q But you didn't want the two to ten shift, did  
12 you?

13 A Yes. I had told him that was fine.

14 Q You don't remember testifying that what you  
15 wanted was the six to two shift?

16 A Yes, that was the first preferable shift. But  
17 when he said he didn't have that available, he had a two  
18 to ten, I said that would be fine.

19 Q But, then, you never put in any kind of a  
20 request for a transfer, did you?

21 A Where do you go put them in?

22 Q The only thing you did was nothing; right?

23 A I felt like I could do nothing. Oh, you just

1 want me to say yes or no. I am sorry.

2 Q I want you to answer the question and not tell  
3 me what you felt or why, but if the answer is you didn't  
4 go see anybody or didn't do anything, the answer is  
5 that. You did not, did you?

6 A No.

7 Q And, then, immediately (attorney snaps his  
8 fingers), when you talked to Ms. Rankins and Ms. Spann,  
9 you got what you wanted, didn't you?

10 A Yes. I had no idea that would happen the way  
11 that it did.

12 Q And once you made that complaint, you were  
13 moved out from under Mr. Hardy and he was no longer able  
14 to sexually harass you, was he?

15 A He didn't.

16 Q He wasn't able to? You didn't have any  
17 contact with him, did you?

18 A I didn't have any contact with him, but he  
19 knew where I lived, remember.

20 Q I guess for that matter, he could find you  
21 today, couldn't he?

22 A I hope not.

23 Q But I am saying, as far as on this job, you

1     were separated from him so he could no longer sexually  
2     harass you? That is a fact, isn't it?

3           A     Yes, sir.

4           Q     Immediate, that very day; right?

5           A     Yes. But he had access to this campus.

6           Q     He had access to the campus until he got  
7     fired?

8           A     Yes, he did.

9           MR. JACOBS: Can we go off the record just a  
10           minute?

11           (Thereupon, an off-the-record  
12           discussion was held.)

13          Q     And then when you changed on that date of your  
14     complaint your dorm, your duties and responsibilities,  
15     though, didn't change? You continued to work in the  
16     same position that you did before?

17          A     The same job title, you mean?

18          Q     Yes.

19          A     Yes, sir.

20          Q     And you are a youth services aid?

21          A     Yes, sir.

22          Q     Do you have a degree?

23          A     No, sir.

1 Q And your pay didn't change?

2 A No.

3 Q Your benefits didn't change?

4 A No.

5 Q Your duties and responsibilities didn't  
6 change?

7 A No.

8 Q You simply changed from one dorm to another  
9 inside this same campus, inside this same facility?

10 A Yes, sir.

11 Q And, now, let's back up. During the time that  
12 Hardy was your supervisor, before you made this  
13 complaint, there was a time when Mr. Hardy changed your  
14 shift; correct?

15 A Yes.

16 Q And as I understand it, you were given the  
17 option of either -- there were two people, one of whom  
18 he was going to change, you and -- what is the teacher's  
19 name?

20 A Ingria.

21 Q That was Ingria Williams?

22 A Yes.

23 Q And he could only give one of you the choice;

1 right?

2 A Yes, sir.

3 Q And the other one was going to have to move,  
4 and he gave you that choice, didn't he?

5 A He did.

6 Q And when you made that shift change, your  
7 duties and responsibilities didn't change, your pay  
8 didn't change, nothing changed with regard to your  
9 employment, did it?

10 A No.

11 Q No, nothing changed? That's correct?

12 A No, just the hours that I worked.

13 Q Now, coincidentally, that happened in January  
14 -- Was it '05?

15 A Yes.

16 Q And, coincidentally, with that change, it is  
17 also true that from that point on, you had very little  
18 contact with Michael Hardy, period?

19 A We had contact.

20 Q At work?

21 A No. Well, there were a couple of times that  
22 he scheduled me for days, but, usually, he called on the  
23 phone.

1 Q Scheduled you for what?

2 A Days.

3 Q So you would work a day shift?

4 A Every now and then.

5 Q Which shift did Hardy work?

6 A He worked days.

7 Q So there were a couple of times when you  
8 worked after January the same shift with Hardy?

9 A Yes, sir.

10 Q During that period of time, did Hardy do  
11 anything of a sexual nature?

12 A During the time that I worked the twelve to  
13 eight?

14 Q After January, when you went to the night  
15 shift but on a couple of occasions worked a day shift  
16 with him, during those periods of time you worked on the  
17 day shift with him, did he do anything that was sexually  
18 inappropriate?

19 A Yes. He would make comments.

20 Q What kind of comments?

21 A About how you look in your clothing, things of  
22 that nature.

23 Q I correctly understand that when you went to

1 the night shift, you were fine with that?

2 A Yes.

3 Q Because you didn't have any more contact with  
4 him?

5 A Yes. The contact would be limited.

6 Q Now, under Hardy, you always got good  
7 evaluations?

8 A Yes.

9 Q Actually, after your initial -- I think you  
10 got a low evaluation during your six-month probationary  
11 period; correct?

12 A I did.

13 Q But then after that, you don't have any  
14 complaints about the evaluations that you received from  
15 Michael Hardy, do you?

16 A No. He let me do them myself.

17 Q And you always got pay raises?

18 A Yes.

19 Q You never lost any benefits?

20 A No.

21 Q Never lost anything that would transfer or  
22 translate into money or cash terms, did you?

23 A No.



1 Q Now, there was a couple of times that I think  
2 you said that Hardy did some things to you. Like, I  
3 think he sent you over to the Hold Dorm one day and  
4 threatened to reprimand you about something that went  
5 on; maybe even twice. But Hardy never reprimanded you,  
6 did he?

7 A No.

8 Q Have we talked about Mr. Harvest? We have  
9 not.

10 The incident that I think was the straw that broke  
11 the camels back, on the day that you made your  
12 complaint, Mr. Harvest told you that you were fucking up  
13 his shift. Do you remember that?

14 A Yes, he did.

15 Q Am I correct in understanding that what that  
16 was about was a Father's Day card a kid wanted to send  
17 and it would have required a violation of policy to do  
18 it, but following policy would actually prevent the kid  
19 from sending his Father's Day card? Is that what I  
20 understand?

21 A Is it actual policy or is it a rule that is in  
22 place? I am not sure.

23 Q Well, whichever. In other words, doing it the

1 way it is supposed to be done, would have, if I  
2 understand, prevented that kid from sending his Father's  
3 Day card out; right?

4 A Yes.

5 Q And you wanted to be able to help the kid send  
6 his Father's Day card out?

7 A Yes.

8 Q But you don't deny that to send the card out  
9 would have required doing it the wrong way?

10 A No, I do not deny that, but we have done it  
11 many times.

12 Q With the supervisor's knowledge?

13 A Who? Mr. Hardy?

14 Q No, Mr. Harvest.

15 A He is a supervisor?

16 Q Wasn't he? He is the one that said you can't  
17 do it, isn't he?

18 A I don't think it was --

19 Q Who was it?

20 A It was Mr. Harvest. Was he a supervisor?

21 Q I don't know. But Harvest is the one who you  
22 said, said to you, you're fucking up my shift --

23 A Yes. He had been on the shift way longer than

1 me.

2 Q So he was not a supervisor. Was he not a  
3 shift leader?

4 A I don't know.

5 Q What is Mr. Harvest's position?

6 A I thought he was a youth services aid.

7 Q So he is a co-worker and you got annoyed  
8 because here is another co-worker saying something rude  
9 to you?

10 A No, I didn't get annoyed. I thought it was  
11 very disrespectful.

12 Q Have we talked about everybody here today that  
13 you claim have retaliated against you in any way?

14 A I don't know. As far as I -- I don't know.  
15 As far as I can tell at this moment.

16 Q You can't think of anybody, sitting here, that  
17 we haven't talked about?

18 A No.

19 Q In your complaint -- and I know you didn't  
20 write it, your lawyer wrote it -- you sued Michael Hardy  
21 and you sued DYS? You know that; right? You have two  
22 defendants in this case? You know that; right?

23 A Yes, sir.

1 Q Now, I represent DYS. I don't represent  
2 Michael Hardy.

3 What did DYS do, in your mind, to retaliate against  
4 you?

5 A They let the retaliation go on for way too  
6 long, even after the many times I complained about what  
7 was going on in that dorm.

8 Q Anything else?

9 A Allowing that to happen.

10 Q Allowing that to happen. You said that.  
11 Anything else?

12 A The investigation wasn't as thorough as it  
13 should have been.

14 Q Because he said that you hadn't gotten all of  
15 your training?

16 A No. Because he said that my co-workers -- he  
17 had talked to my co-workers.

18 Q And they denied the things that you said?

19 A No. No. He said they denied what I said.

20 Q That is true?

21 A I had to ask him, Well, have you talked to  
22 them since then, since I made this other complaint? And  
23 he told me that they said that I was paranoid. And of

1 course, I asked them had they spoken with him, and they  
2 said, no, they had only spoken with him once.

3 Q Who did you ask?

4 A Mr. Hammond and Mr. Webster. Those are the  
5 people that I work with.

6 Q So you think that Mr. Staton should have gone  
7 and taken another recorded statement because you made  
8 another similar complaint?

9 A I read somewhere where it says that everytime  
10 I made a complaint, it was investigated.

11 Q And your complaint is, in connection with that  
12 investigation, he did not go and once again call those  
13 people in and make them sit down and give him another  
14 recorded statement; am I correct?

15 A That would have been thorough.

16 Q Am I correct, is that what you are complaining  
17 about?

18 A That is one.

19 Q Anything else?

20 A I did say about Mr. Lee and his treatment,  
21 didn't I? That was the first thing I said?

22 Q I am sorry. About who?

23 A Mr. Lee.

1 Q I think we talked about Mr. Lee.

2 Really, I was asking about Mr. Staton.

3 A Mr. Staton?

4 Q Yes. You said that his investigation was not  
5 complete, or something to that effect. I am asking you  
6 what do you think he should have done, and you said he  
7 should have taken some more statements from your  
8 co-workers again. And I am asking you: Is that with  
9 regards to Staton?

10 A And the fact that even though I don't think he  
11 knew Mr. Lee, he said the only reason Mr. Lee acted the  
12 way he did was because he was ex-military, and I didn't  
13 think that had anything to do with him doing his job  
14 fairly.

15 Q Okay. Well, you do understand that you  
16 yourself don't have any evidence that any of this was  
17 retaliatory in connection with Michael Hardy?

18 You got a lawyer. What would you expect Staton to  
19 do?

20 A I don't know what Mr. Staton's job is to do.

21 Q And, obviously, you are not complaining -- you  
22 are not suing DYS for the retaliatory actions that  
23 Michael Hardy attempted to take which you never even

1 knew he did, are you?

2 A He did do other things before he wrote that  
3 letter you told me about.

4 Q Let's back up. Let's try this again. You are  
5 not -- correct me if I am wrong. You are obviously not  
6 suing DYS for the things that Michael Hardy tried to do  
7 to you that you didn't even know he had tried to do?  
8 Those are not the things you are suing DYS for, are  
9 they?

10 A I am sorry. You are saying I am not suing DYS  
11 for things that I didn't know about?

12 Q I am asking you is that correct?

13 A Yes, that's correct. If I didn't know about  
14 it, how could I?

15 Q Right. You didn't know that he had gotten  
16 some of the staff to sign a petition, did you?

17 You didn't even know that had happened?

18 A When?

19 Q When you made this complaint?

20 A In July?

21 Q Yes. You didn't even know that had had  
22 happened until you got to the Hardy hearing, did you?

23 A No. I hadn't seen it.

1 Q So you are certainly not suing DYS --

2 A I hadn't seen it, but I had heard about it.

3 Q You testified that you didn't even know it.

4 A I didn't know about it until you showed it to  
5 me, but I had heard the rumor.

6 If I didn't see it, it is just a rumor.

7 Q But you are not suing DYS for Michael Hardy's  
8 actions in that matter, are you?

9 A In the matter that he retaliated against me?

10 Q In connection specifically to the petition  
11 that --

12 A Dortch put out?

13 Q Well, I think it was Dortch. I am only aware  
14 of the petition, the documents, that you have seen here  
15 that you saw in that hearing.

16 And that was the first time you learned about it.  
17 And since you didn't know about it, surely you are not  
18 suing DYS for something that Hardy did that you weren't  
19 even allowed to know had happened?

20 A That was the first time I had seen them.

21 Q Is it correct or not? Just tell me yes or no.  
22 Are you suing DYS for that?

23 A They should have stopped Mr. Dortch from doing



1 that.

2 Q So are you suing DYS for that?

3 A Just for the fact that all of this could have  
4 been prevented.

5 Q So you are not suing DYS in connection with  
6 that, that petition that you didn't know about? You are  
7 not suing DYS; is that correct?

8 A I knew about the petition. I just had never  
9 seen it.

10 Q Is that correct or not? Just yes or no?  
11 Are you suing DYS for something that you didn't  
12 know had happen, or not?

13 A I knew it had happened. I just didn't --

14 Q Are you suing DYS for something that you  
15 didn't know had happened, or not?

16 A I wouldn't sue them about something they  
17 didn't do, but -- If they weren't responsible, I  
18 wouldn't.

19 Q There were some other things that you learned  
20 that Michael Hardy tried to do. Do you remember?

21 A Like what?

22 Q Do you remember that there was an issue about  
23 a meeting that he had attempted to call? Did you not

1 know that?

2 A No.

3 Q You may never have known that.

4 A No.

5 Q So the things that -- What about the  
6 grievance? Are you aware that he had attempted to file  
7 a grievance against you?

8 A I had heard that. The first time, you told me  
9 that if you didn't get him on the sexual harassment, you  
10 would get him on this piece of paper that you had.

11 Q Did I tell you what it was?

12 A No, you didn't tell me what it was, but I  
13 learned later.

14 Q You learned later. How did you learn?

15 A Through the grapevine.

16 Q And that would have been after the hearing,  
17 wouldn't it, the hearing of Michael Hardy?

18 A I think so.

19 Q All right. And, again, please answer this  
20 quickly.

21 I assume, tell me if I am wrong, that you are not  
22 suing DYS for Michael Hardy's having tried to do that  
23 since you didn't even know it? Am I correct?

1 A Well, he was employed by DYS when he did that.

2 Q Are you suing DYS for that or not? Yes or no?

3 One word. One word.

4 A Well, DYS is responsible for Michael Hardy.

5 Q That's a lot of words. That's a lot of words.

6 One word.

7 MR. JACOBS: Object to the form.

8 Q Are you suing DYS for that or not? Is that a  
9 basis of this lawsuit? I am entitled to know that. It  
10 is a simple question.

11 A I am sorry. I have done forgot the question.

12 Q Are you suing DYS for Michael Hardy attempting  
13 to file a grievance which was never sent?

14 A Attempting?

15 Q Yes.

16 A Well, I can't sue somebody for attempting to  
17 do something.

18 Q So the answer to that question is no; right?

19 A Well, DYS was responsible for Michael Hardy  
20 because they employed him.

21 Q And DYS didn't allow any grievance against  
22 you, did it?

23 A Not to my knowledge.

1 Q Not to your knowledge. Do you know why that  
2 is not to your knowledge?

3 A Because I didn't do anything.

4 Q Because it didn't happen. You did not have to  
5 answer any grievance, did you?

6 A No. I don't think so.

7 Q In fact, the only thing that happened was that  
8 he had to answer the allegations that you raised, isn't  
9 that true?

10 A Yes, because they were true.

11 Q So you are certainly, therefore, not suing DYS  
12 for the grievance, are you?

13 MR. JACOBS: Object to the form.

14 A Mr. Perry, I am tired and you are leading me  
15 on. I am sorry.

16 Q You are not answering my questions. I guess  
17 we can sit here until the morning. If you don't want to  
18 answer the question, then --

19 A I want to answer the question to the best of  
20 my ability. I want to.

21 Q Just let me -- Since you have refused to  
22 answer this question, let's see if I can reconstruct it.

23 A I don't refuse to do anything.

1 Q You absolutely do. Let me see if I can  
2 reconstruct it. I believe you said your testimony is  
3 you certainly wouldn't sue DYS for something you didn't  
4 know about; right?

5 A Something that I didn't know about?

6 Q Right.

7 A If I found out about it and it wasn't right.

8 Q You didn't know about that grievance, did you?  
9 You didn't even know it had happened, did you?

10 A No, not at the time he gave it to you guys.

11 Q You did say to Mr. Lee, Man, you must be  
12 tripping, on the telephone?

13 A I said, You are tripping. Yes, I did.

14 Q And that was because he told you to produce a  
15 doctor's excuse?

16 A No, sir.

17 Q You didn't call him because you said your  
18 mother was in the hospital?

19 A Yes. But that is not why I said that.

20 Q Why did you say it?

21 A Because when I called him, he told me that he  
22 didn't have anything to do with that.

23 Q To do with what?

1 A To do with the fact that my mother was sick.

2 All he knew was that he wasn't coming out there.

3 Q And so you said, You must be tripping?

4 A You're tripping. That is what I said.

5 Q What did you mean? What does that mean?

6 A He must be kidding.

7 Q Tripping means kidding?

8 A Yes.

9 Q And you didn't get a reprimand, did you?

10 A Well, he tried to and Ms. Rankins sent a  
11 letter to me stating that she thought the department  
12 would uphold the reprimand for that.

13 Q You didn't get a reprimand for that, did you?

14 A No, I didn't.

15 Q Now, you told Mr. Staton that Mr. Lee wouldn't  
16 give you three days off in a row. Do you remember that?

17 A Yes.

18 Q That is not correct, though, is it? You  
19 actually got three days off in a row three different  
20 times, didn't you?

21 A Just three different times?

22 Q When you made that complaint, you had had  
23 three different occasions where you got three days off

1 in a row?

2 A Well, there were others that had that a lot  
3 more.

4 Q You know that is correct, don't you?

5 A No, I don't.

6 Q When you told Mr. Staton that he wouldn't give  
7 you three days off in a row, that wasn't true, was it,  
8 because you had gotten three days off?

9 A I can't say that, because I don't recall that.

10 Q If the records show that, you wouldn't  
11 disagree with that, would you?

12 A Well, you know, there has been a time where I  
13 have given copies of schedules to Ms. Spann and she had  
14 the requested copies from someone else who had them and  
15 they were different. So I really can't say, Mr. Perry.

16 Q Now, you produced in your case some schedules  
17 here as evidence. Are you suggesting that the schedules  
18 don't say what they're supposed to say?

19 A I am saying that has happened.

20 Q Are you saying that you shouldn't have  
21 submitted those because they don't mean anything?

22 A No. I am saying that when I gave her the copy  
23 of the schedule that I got from the dorm and she

1 requested the same copies, they were different?

2 And I don't have the capacity of making copies of  
3 the schedules or have a computer like that to print any  
4 of them out.

5 MR. JACOBS: If you want us to stipulate that  
6 some of the records are wrong, we will  
7 probably do that.

8 Q Your retaliation claim, the problem with your  
9 co-workers, you wanted to be excused from meetings with  
10 your co-workers and otherwise being around your  
11 co-workers, because their dislike for you made you  
12 physically sick; is that correct?

13 A I was physically ill on an occasion.

14 Q Is what I said correct?

15 A What did you say?

16 Q Your claim about your co-workers, essentially,  
17 you wanted special treatment, you wanted to not have to  
18 attend meetings, you wanted to be excused from meetings,  
19 and you wanted to not have to attend training because  
20 being in their presence made you sick, isn't that true?

21 MR. JACOBS: Object to the form.

22 A No, sir. That is not true. There was one  
23 time when I asked to be excused from a meeting, and I



1 did not ask for special treatment.

2 Q Well, everybody else had to be in the meeting,  
3 didn't they?

4 A I don't know if all of them came or not.

5 Q You gave Ms. Spann some schedules to show you  
6 didn't get three days off in a row. Do you remember  
7 that?

8 A I don't remember it, but it is possible.

9 Q But you didn't give her all of the schedules,  
10 did you?

11 A All of the schedules?

12 Q Yes.

13 A No, I didn't have access to all of the  
14 schedules.

15 Q Is there any additional basis that you can  
16 come up with --

17 A Not at this moment.

18 Q Let me finish my question. -- to suggest that  
19 any of your co-workers or supervisors or anybody else or  
20 anything anybody did was the result of anything  
21 connected with your claim against my client?

22 A Mr. Perry, I am tired, and not at this moment,  
23 I can't recall because I have a headache.

1 Q Well, do you want to finish this or not? Do  
2 you want to wait? Your lawyer wants to go forward.

3 A I am trying to finish it now.

4 Q Then, I need your responses.

5 If you are not able to respond, then tell me. I  
6 will be happy to either finish this or come back. It is  
7 your lawyer saying he wants to finish it.

8 A Yes, I want to finish, too.

9 Q So my question is: Have you thought of or  
10 come up with any ideas, any additional way that would  
11 show that any of the things that you are claiming about  
12 what other people did, besides my client, were the  
13 result of your complaint about Michael Hardy or somehow  
14 connected to it?

15 A Anything else?

16 Q Yes.

17 A Not at this moment, sir.

18 Q Mr. Lee had been your supervisor -- he didn't  
19 become your supervisor until almost six months after  
20 this complaint about Michael Hardy, isn't that true?

21 A I don't know how long it was.

22 Q It was more than three months, wasn't it?

23 A When did he come? In September?

1 Q I am actually not sure. You don't remember?

2 A No, sir.

3 Q What do you want in this case?

4 A Vindication.

5 Q What does that mean? I need specifics.

6 A I want it to be known that I was telling the  
7 truth; I was not lying.

8 Q You don't think that Michael Hardy having been  
9 fired based on what you said and personnel upholding  
10 that?

11 A No, sir. Because the people back there seem  
12 to think he and I were having a relationship.

13 Q So you want us to go tell everybody that you  
14 and Michael Hardy didn't have a relationship?

15 A If you would like to do that, that would be  
16 good.

17 Q Anything else you want out of this lawsuit?

18 A Like what do you mean?

19 Q That's it? You are going to go tell the jury  
20 that all you want out of the lawsuit is for your  
21 co-workers to be told that you told the truth and that  
22 will solve everything?

23 A I think I need some more of that psychological

1 counseling because I can't afford it.

2 Q You need psychological counseling for what?

3 A For the mental abuse that I have experienced  
4 while working here.

5 Q How much is that?

6 A I don't know.

7 Q Have you had to pay for any psychological  
8 counseling out of your pocket?

9 A I had to pay the co-pay, I think.

10 Q How much?

11 A I don't know. I don't remember.

12 Q A ballpark figure?

13 A I know the department recently set up for us  
14 to have three sessions with a psychologist.

15 Q So I think you know what I am trying to ask  
16 you.

17 What do you want out of this case? You are asking  
18 for damages. What do you want?

19 A Compensation.

20 Q Well, how much? What do you want? What do  
21 you intend to ask for? What do you think it is worth?

22 A It is worth a whole lot more than what you are  
23 willing to give me.

1 Q How do you know that?

2 A I know, because I have lost a lot, Mr. Perry.

3 My dignity.

4 Q So no matter what anybody is willing to give  
5 you --

6 A It still wouldn't be enough.

7 Q -- is not enough, is it?

8 A No, sir.

9 Q What would be enough?

10 A At this moment, I don't know what would be  
11 enough.

12 Q But you want a whole lot of money?

13 A If you would like to give me a whole lot of  
14 money, I will accept it. But money can never give me  
15 back what I have lost.

16 Q Well, what do you understand you will ask a  
17 jury to give you?

18 A What will I ask a jury? I don't know, sir. I  
19 don't know what I will ask them.

20 Q You are just going to leave that up to your  
21 lawyer, and get the most you can possibly get, period;  
22 is that correct?

23 What you want out of this case is the very most you

1 can possibly get?

2 A I don't know, Mr. Perry.

3 Q Is there anything else you want out of this  
4 lawsuit?

5 You have said you wanted your co-workers to know  
6 you told the truth, you have said you want counseling,  
7 and you have said you wanted a whole lot of money, the  
8 most you can get?

9 A You said I wanted a whole lot of money. I  
10 didn't say that.

11 Q Well, what do you want? Why don't you answer  
12 it?

13 A At this moment, I don't know what exactly I  
14 want. I just know that I have been treated unfairly,  
15 and whatever you feel that I deserve, I probably do  
16 deserve it, whatever that is, whether it is money, or --  
17 Can you restore my dignity? Can you restore my faith in  
18 people? Can you help me to not be frightened when I get  
19 in my car?

20 Q Anything else you want out of this lawsuit?

21 A Not that I can think of at the moment. I want  
22 to keep my job, too. Can you help with that, please?

23 MR. PERRY: That is all I have got.

1 MR. JACOBS: Thank you very much.

2 \* \* \* \* \*

3 DEPOSITION ADJOURNED @ 6:45 P.M., JANUARY, 15th, 2008

4 \* \* \* \* \*

5 DEPOSITION RECONVENED @ 9:00 A.M., January 22nd, 2008

6

7 \* \* \* \* \*

8

9 EXAMINATION

10

11 BY MR. WILSON:

12 Q Before we go into the deposition, I have  
13 marked as Hardy Defendant Exhibit 1, the notice of the  
14 deposition and placed that in the record. You have been  
15 sent a copy or should have received a copy through your  
16 attorney. You did receive a copy, did you not?

17 (Thereupon, Hardy Exhibit No. 1  
18 was marked for identification.)

19 A Yes.

20 Q For the record, would you state your name,  
21 please?

22 A Tera McMillian.

23 Q Ms. McMillian, would you spell your last name?

1 A M-C-M-I-L-L-I-A-N.

2 Q All right. My name is Jim Wilson, and I am  
3 the attorney that is representing Mr. Hardy in this  
4 case, and in that respect, I represent him only, and  
5 will be asking you some questions in the form of a  
6 deposition.

7 In light of the fact that you just sat through a  
8 lengthy deposition last week, I am sure you are familiar  
9 with the process we go through. I want to remind you if  
10 you do not understand any question that I ask, please  
11 stop me and tell me and I will be glad to repeat the  
12 question or rephrase it, as is appropriate.

13 I am not going to ask you any trick questions. My  
14 desire here is to get the elements and to get the truth.  
15 You will be under oath and are under oath and that is  
16 what I am asking you to testify to is to answer my  
17 questions.

18 I anticipate this deposition will take several  
19 hours. It will not take as long as the one did on  
20 Tuesday. As an accommodation to you and the court  
21 reporter and myself, we are going to stop about every  
22 hour and take a little short break.

23 Do you have any questions?



1 A No, sir.

2 Q You are the plaintiff in this lawsuit that is  
3 now pending against the Alabama Department of Youth  
4 Services and my client, Mr. Hardy; is that correct?

5 A Yes, sir.

6 Q Ms. McMillian, I would like for you to tell me  
7 in your own words how this came about.

8 How did this involvement with Mr. Hardy of which  
9 you are now complaining, how did it start?

10 A It started with Mr. Hardy making comments.

11 Q Now, are those the comments in which he asked  
12 you to perform oral sex on him?

13 A It started before that.

14 Q When did it first start?

15 A Around May.

16 Q Of what year?

17 A 2005.

18 Q 2005?

19 A 2003, I am sorry.

20 Q Around May of 2003?

21 A Yes, sir.

22 Q And at that time, what was your job?

23 A I was a youth services aid.

1 Q In which dormitory were you working?

2 A Paige Hall.

3 Q And were you on the same shift with Mr. Hardy?

4 A No, sir. The shifts coincided, but he worked  
5 the days and I worked either two to ten or four to  
6 twelve.

7 Q And you say it is during that time frame that  
8 this series of events started; is that correct?

9 A Yes, sir.

10 Q Is that your testimony?

11 A Yes, sir.

12 Q Tell me what the first event was.

13 A In the beginning, he would just make comments  
14 about how I dressed, how I looked, and things of that  
15 nature.

16 Q And you considered those to be inappropriate?

17 A No, sir. Not at first.

18 Q Tell me about the inappropriate comments that  
19 you are talking about.

20 A They started around that time, when he started  
21 saying that he -- some attributes that he liked about  
22 women.

23 Q And what did he say?

1 A He liked big titties.

2 Q Is it your testimony that in the year 2003, he  
3 told you that he liked big titties?

4 A Yes, sir. He liked big titties.

5 Q And what did you say to him when he said that  
6 on the first time?

7 A At first, I really didn't know what to say.

8 Q My question is: What did you say to him?

9 A I am sorry. I said, Excuse me. And he  
10 repeated that he liked big titties.

11 Q Give me a month. What month was it that he  
12 did that?

13 A It may have been in the summer.

14 Q The summer?

15 A The summer of 2003.

16 Q Summer starts on the 21st of June. So it was  
17 after the 21st of June?

18 A I'm not exactly sure.

19 Q Was it in June?

20 A I'm not exactly sure, but I know it was  
21 summertime.

22 Q When did he tell you that he wanted you to  
23 suck his dick?

1 A That was in -- I think it was in 2004.

2 Q When in 2004?

3 A It was in the summer or fall of that year.

4 Q The summer. What do you mean by "summer"?

5 A What do I mean by summer?

6 Q Yes. June? July? August? September?

7 A I'm not exactly sure what month it was, but it  
8 was in that time frame.

9 Q Was this the date that he allegedly asked you  
10 or sent a message for you not to go to the dining  
11 facility?

12 A Yes, sir.

13 Q Tell me what happened on that date.

14 A We were getting the children ready for dinner.

15 Q Who is "we"?

16 A The staff.

17 Q Who are "we"? Who are you talking about?  
18 Give me names.

19 A I know myself, Mr. Miles, Mr. Farley, and I'm  
20 not exactly sure who else.

21 Q And this was at Paige Hall?

22 A Paige Hall.

23 Q Tell me what happened next.

1           A    We were getting the children ready for dinner.  
2   I went to the front of the line. Mr. Miles was at the  
3   end of the line. He told me Mr. Hardy needed to speak  
4   with me. I said, okay, and I walked back.

5           Q    And what happened to the children?

6           A    They went to the dining hall.

7           Q    And then you went where?

8           A    Back into the dormitory.

9           Q    Into a room or where in the dormitory?

10          A    We were actually in the -- I guess you would  
11   call it the dayroom. And he asked me to come to his  
12   office.

13          Q    Meaning Mr. Hardy?

14          A    Mr. Hardy.

15          Q    What happened in his office?

16          A    When we were in his office, he said that --  
17   Well, Ms. Moton had left and she was the one who was  
18   helping him with the ACA accreditation paperwork.

19          Q    Ms. who?

20          A    Moton.

21          Q    How do you spell that?

22          A    M-O-T-O-N.

23          Q    All right.

1           A    And he asked me if I would help him with it,  
2   and I told him yes.

3           Q    And for the benefit of those who don't know,  
4   what is this paperwork that you are talking about?

5           A    The paperwork is all of the files that have to  
6   be up to date that he has in his office. Well, that he  
7   has in the file cabinet, on the students.

8           Q    And you told him you would help him?

9           A    Yes.

10          Q    What else did he say?

11          A    He told me if I helped him, there would be  
12   perks to doing that.

13          Q    Was this all in this one conversation?

14          A    Yes, sir.

15          Q    What else did he say?

16          A    He said that I would be allowed to come into  
17   work early and also to leave early.

18          Q    Do you think these would be appropriate perks  
19   for doing this extra duty?

20          A    No, sir.

21          Q    You don't?

22          A    No, sir.

23          Q    In other words, if he is asking you to do the

1 extra paperwork, you don't think it would be appropriate  
2 for him to let you have a little flexibility on when you  
3 came to work, through extra time?

4 A No, sir. We all helped if somebody needed  
5 help. If Mary needed help with it, I would help her.

6 Q Are you telling me there was some other motive  
7 for him to give you these perks?

8 A Yes, sir.

9 Q And what were those motives?

10 A If I came in early, I would probably be there  
11 when he was there.

12 Q What difference does it make whether he is  
13 there or not if you are doing the paperwork?

14 A He would be present in the dormitory.

15 Q Did he say, "I am going to give you these  
16 perks if you perform sex on me"?

17 A No, sir, he didn't.

18 Q He said there would be perks associated with  
19 your doing the paperwork, did he not?

20 A Yes, he did.

21 Q What else happened then?

22 A He started talking about the Lord.

23 Q The Lord?

1 A Yes, sir.

2 Q Did he say something sexual about the Lord?

3 A No, he didn't say anything sexual about the  
4 Lord.

5 Q What did he say about the Lord?

6 A He said that -- He started quoting scriptures,  
7 and he told me that -- he asked me was I a believer, and  
8 I told him yes. He said he could sense that. And he  
9 said that he felt like the Lord was giving him the power  
10 to prophesize.

11 Q Now, this is the same conversation?

12 A Yes, sir.

13 Q And how much time had taken place between the  
14 time he was talking about your doing paperwork and he is  
15 talking about the Lord? Was it like two minutes or ten  
16 minutes or an hour or what?

17 A It wasn't an hour, but I can't say for sure  
18 how many minutes.

19 Q But it was all in that same conversation?

20 A Yes, sir, it was.

21 Q What did he say next?

22 A He said the Lord was giving him the power to  
23 prophesize. He said he had some yoke stuff.



1 Q Had some what?

2 A He still had some yokes.

3 Q What did he mean by yoke? What did you  
4 understand him to mean?

5 A I understood that to mean -- I am not sure  
6 what exactly he meant, but my understanding of it was he  
7 had some things he had to work out with the Lord.

8 Q What else?

9 A He did tell me that he loved his wife Linda,  
10 and he said that he also had a fantasy.

11 Q What else?

12 A And he said would you like to hear it.

13 Q And what did you say?

14 A I said sure.

15 Q Why didn't you say no?

16 A Because I thought maybe he was talking about  
17 having a fantasy of having a large church, because he  
18 said he wanted to be a pastor.

19 Q So at this point in the conversation, am I to  
20 understand that he had said nothing sexual?

21 A No, sir, he hadn't.

22 Q So you thought it was going to be something  
23 about the Lord?

1 A Yes, I did.

2 Q What did he say then?

3 A He said that he had a fantasy and would you  
4 like to hear it, and I said, sure. He said, well, my  
5 fantasy is for you to suck my dick while they're at the  
6 dining hall.

7 Q And what happened next?

8 A I looked at him and I told him, Mr. Hardy, I  
9 am sorry. I can't do that.

10 Q What was said next?

11 A He told me to stop acting crazy and come on  
12 over here.

13 Q Now, I take it you were not sitting side by  
14 side?

15 A No, sir.

16 Q Where were you sitting or standing?

17 A I was sitting on a loveseat in his office.

18 Q And he was sitting where?

19 A Behind his desk.

20 Q And when he said that, what did you say?

21 A I said, I am sorry. I just can't do that.

22 Q And what happened next?

23 A I asked him could I be excused.

1 Q And what did he say?

2 A He said, okay. Where are you going? I said I  
3 wanted to go out into the dayroom. When we got out into  
4 the dayroom, I still felt very uncomfortable,  
5 frightened.

6 Q Wait just a second. That is what you said.  
7 What did he say?

8 A What did he say?

9 Q Yes.

10 A He said, Okay.

11 Q And then what did you do?

12 A I went out of the office into the dayroom.

13 Q What did he do?

14 A He came out, also.

15 Q Did he come out immediately or did he wait for  
16 a while?

17 A He came out immediately.

18 Q So you didn't say, "Get away from me," did  
19 you?

20 A No, sir, I didn't.

21 Q You didn't say, "That is obscene, and I do not  
22 want to hear that again," did you?

23 A No, I didn't.

1 Q You didn't say, "I can't believe you said that  
2 to me, Mr. Hardy"? "What's wrong with you?" You didn't  
3 say any of those things?

4 A No, sir, I didn't want to upset him.

5 Q No. I asked you: You didn't say any of those  
6 things, did you?

7 A No, sir.

8 Q Why do you think you would have upset him?

9 A Because --

10 Q The man just asked you to do oral sex,  
11 according to your testimony. Why would you have upset  
12 him if you said something along that line?

13 A Because he had already told me about the  
14 campus being his power base, and I needed to keep my  
15 job, sir.

16 Q So you are now relating this back to some  
17 other time when he had a different conversation with you  
18 that had nothing to do with sex; is that correct?

19 A Those had something to do with sex.

20 Q I am asking you. You were talking about his  
21 ability to influence the campus. That had nothing do  
22 with sex, did it?

23 A I don't know.

1 Q But you are putting that together in your mind  
2 that it had something to do with sex? Is that right?

3 A I am putting the ability that he had to  
4 possibly get me fired in my mind.

5 Q Let me make sure I am clear for the record.  
6 According to your testimony, your boss makes a sexual  
7 approach to you, which is overt, using the language  
8 "suck my dick," and you do not rebuff him?

9 A Yes, I did rebuff him. I told him I couldn't  
10 do that.

11 Q Beyond that, you didn't say anything else?

12 A No, sir. I did not get angry.

13 Q He didn't get angry either, did he?

14 A I was angry but did not show it.

15 Q Did he get angry?

16 A He seemed very disappointed.

17 Q Disappointed or angry?

18 A Disappointed.

19 Q But he didn't raise his voice to you, did he?

20 A He did not.

21 Q He didn't throw anything at you, did he?

22 A He did not.

23 Q He didn't threaten you, did he?

1 A He did not.

2 Q You got up and walked out of the room?

3 A Yes, sir.

4 Q And according to your testimony, he then came  
5 out of the room?

6 A He did.

7 Q Where did you go?

8 A After that, I told him that I needed to go  
9 outside to smoke a cigarette.

10 Q And what happened?

11 A I went outside and began to smoke a cigarette,  
12 and he came out there also.

13 Q When you say "outside" for those who aren't  
14 familiar --

15 A On the porch.

16 Q Let me finish. -- what are you talking about  
17 outside?

18 A Outside the dormitory on the porch at Paige  
19 Hall.

20 Q Is that a covered porch or just an open area?

21 A It is a small covered porch.

22 Q Is it the porch to the entryway, where people  
23 come and go to get into the building?

1 A Yes, sir.

2 Q You went outside to smoke a cigarette and he  
3 went out. What happened then?

4 A What happened then was that -- at first, we  
5 didn't say anything to each other. I started smoking a  
6 cigarette. And I asked him, Is this what you and Ms.  
7 Moton were doing when she was helping you?

8 Q You asked him?

9 A Yes, sir.

10 Q He didn't say anything to you; you asked him?  
11 Is that correct?

12 A Yes, sir.

13 Q What did he say?

14 A He said, no, he would never ask her to do  
15 anything like that.

16 Q And what happened next?

17 A After that, we saw the line coming back  
18 towards the dorm.

19 Q The line of what?

20 A Children and staff.

21 Q Who were the staff who were with the children  
22 on that date?

23 A To my recollection, it was Mr. Farley, Mr.

1 Miles. Those are the two that I recall.

2 Q Tell us what happened next.

3 A He said that he was about to leave and he  
4 actually left before they got there.

5 Q So he departed the area?

6 A Yes, he did.

7 Q Did he say anything else to you of a sexual  
8 nature?

9 A Not at that point, no.

10 Q When he departed the area, then the students  
11 came up; is that correct?

12 A Yes, sir, they did.

13 Q And the other members of the staff came up?

14 A Yes, sir.

15 Q Did you have any conversations with anybody,  
16 either the students or the staff members, about what had  
17 happened?

18 A Yes, sir.

19 Q Who?

20 A Mr. Farley.

21 Q Who else was present when you had this  
22 conversation?

23 A No one.



1 Q Well, where did the students go?

2 A Inside of the building.

3 Q What about the other staff members?

4 A Inside of the building.

5 Q So they went in and I take it the door was  
6 shut?

7 A Yes, sir.

8 Q And you remained outside with Mr. Farley?

9 A Actually, Mr. Farley went inside first and  
10 then he came back. He asked me was I okay, and I told  
11 him, yes. He went inside the building, but he came  
12 back.

13 Q Why did he ask you if you were okay?

14 A I don't know. Maybe because of the look I had  
15 on my face.

16 Q Were you still smoking your cigarette?

17 A No.

18 Q When he came back out, what happened?

19 A Asked me what had happened, and I told him.

20 Q What did you tell him?

21 A That Mr. Hardy just asked me to suck his dick.

22 Q And what did he say?

23 A He started laughing.

1 Q And what did he say after he laughed?

2 A He said he couldn't believe that he would do  
3 that.

4 Q And what did you say?

5 A He did it.

6 Q And then what was said?

7 A Nothing much. We sat there for a little  
8 while, quietly, and we got up and went back into the  
9 dorm.

10 Q Now, I thought you were standing outside,  
11 smoking a cigarette?

12 A I was sitting on the steps.

13 Q Sitting on the steps. So your testimony is he  
14 asked you what happened, you told him what Hardy said,  
15 and he laughed and said he couldn't believe Hardy would  
16 say that; is that correct?

17 A He said he couldn't believe that he did that.

18 Q That he did that. And you didn't say anything  
19 else beyond other than, "He did"?

20 A Yes, sir.

21 Q And Mr. Farley didn't say anything else to  
22 you?

23 A No, not at that point. No.

1 Q And then you went on your way?

2 A We went back into the dorm.

3 Q On that date in question, this is the day you  
4 said it was after Ms. Moton had left; right?

5 A Yes, sir.

6 Q Did you have any other contact with Mr. Farley  
7 on that date?

8 A We worked together that evening.

9 Q Did you say anything else to him about this  
10 incident?

11 A We talked about it a little bit.

12 Q On that date?

13 A Yes, on that date.

14 Q What did you tell him or what did he tell you,  
15 or both?

16 A He asked me what was I going to do. I told  
17 him that I am going to try to stay away from him.

18 Q Ms. McMillian?

19 A Yes, sir.

20 Q You had been working for the department of  
21 youth services about how long when this incident  
22 occurred?

23 A Maybe a year and a half or so.

1 Q And you had had some previous training on the  
2 procedures that if somebody was sexually harassed what  
3 to do, had you not?

4 A Yes, sir.

5 Q And we heard testimony last week that you had  
6 been involved in a previous discrimination lawsuit of  
7 another nature, had you not?

8 A Yes, sir.

9 Q And you knew when Mr. Hardy said those things,  
10 if he said those things, you knew right then you could  
11 have filed a complaint on him, did you not?

12 A Yes, sir.

13 Q But you elected not to?

14 A Of course I elected not to. I needed my job.

15 Q And your explanation is that you were afraid  
16 you would lose your job; right?

17 A Yes, sir.

18 Q And, therefore, you took no action against him  
19 whatsoever?

20 A That's right, sir.

21 Q Do you think he thought you were encouraging  
22 him?

23 MR. JACOBS: Object to the form of the

1 question.

2 A No, sir. I don't think I was encouraging him.

3 Q But you elected not to file a complaint, for  
4 whatever reason?

5 A Yes, sir.

6 Q Even after you discussed this later with Mr.  
7 Farley, you still didn't file a complaint, did you?

8 A No, sir.

9 Q No one heard this conversation that you have  
10 reported, did they?

11 A No, sir.

12 Q So it is your word against his word?

13 A Yes, sir.

14 Q And all of the reports of this conversation,  
15 whether it be in Ms. Spann's notes or whoever else's  
16 notes it may be, came from you; is that correct?

17 A Yes, sir.

18 Q Now, I want to make sure I got this time frame  
19 right. You said he started talking to you about sexual  
20 things in 2003, but the first overt offer to you, so to  
21 speak -- that's my term -- or approach to you was on  
22 this date; is that right?

23 A Yes, sir.

1 Q Now, between the time that you say this  
2 started, in this event, what other sexual things had he  
3 said to you, in your opinion?

4 A He liked the way my pants fit.

5 Q Is that sexual?

6 A Yes, sir.

7 Q I mean, how did this come up? Tell me about  
8 it. Did he just come out one day and say, I like the  
9 way your pants fit?

10 A Yes, sir. There wasn't a conversation about  
11 my clothing.

12 Q How did this conversation come about?

13 A He brought it up.

14 Q What did he say?

15 A He told me that he liked the way my butt  
16 looked in the pants.

17 Q That your what?

18 A Butt.

19 Q When did this conversation occur?

20 A That conversation occurred, I am sure,  
21 sometime in 2003.

22 Q Where was it?

23 A At Paige Hall.

1 Q And who was present?

2 A There were people in the dorm, but I'm not  
3 sure if anyone heard this.

4 Q And you considered this to be sexual?

5 A I considered that to be inappropriate.

6 Q Did you tell him?

7 A Yes, sir.

8 Q What did you tell him?

9 A Mr. Hardy, that is inappropriate.

10 Q And what did he say?

11 A He laughed.

12 Q What else did he say to you that was sexual?

13 A He told me that he liked big titties.

14 Q How many times did he tell you that?

15 A A lot of times.

16 Q What do you mean a lot?

17 A More than once.

18 Q More than ten?

19 A I'm not sure.

20 Q More than two?

21 A Yes.

22 Q More than three?

23 A I am sure it was.

1 Q More than five?

2 A I don't know, sir.

3 Q Come on now. One, two, three. Five? You  
4 don't know whether it was more than five or not?

5 A I'm not exactly sure how many times, the  
6 number of times.

7 Q Was it more than two?

8 A I'm sure that it was more than two.

9 Q Was one time inappropriate to you?

10 A Yes, sir.

11 Q Was two times inappropriate to you?

12 A Yes, sir.

13 Q Why didn't you do something about it after the  
14 second time?

15 A Because I needed my job, sir.

16 Q Is that going to be your excuse for  
17 everything --

18 A And I was afraid of him.

19 Q -- that you didn't do anything because you  
20 needed your job?

21 A I was afraid of him. And the atmosphere where  
22 I work, people lose their job for a lot less.

23 Q They may lose their job for a lot less, but



1 who else is receiving these kinds of comments, in your  
2 knowledge? Anybody else?

3 A I don't know, sir.

4 Q But you were receiving them?

5 A Yes, I was.

6 Q You don't think it is appropriate to follow  
7 the process that DYS has and report sexual harassment?

8 A I know of other people who have reported  
9 sexual harassment, sir, and nothing was done about it.

10 Q So you just decided on your own that you  
11 weren't going to do anything about it; right?

12 A I decided on my own that I wanted to keep my  
13 job.

14 Q Ma'am, the question is: You decided you were  
15 not going to report it; is that right?

16 A I decided I wanted to keep my job, sir.

17 Q Did you or did you not report it?

18 A I did not report it, because I wanted to keep  
19 my job.

20 Q You did not report it, period; right?

21 A Not at that time.

22 Q How many times between 2003 and this instance  
23 that you have testified about where he, quote, allegedly

1 asked you to suck his dick, did he tell you he liked big  
2 titties?

3 A I'm not sure how many times, but he did tell  
4 me that on numerous occasions.

5 Q And numerous to you means more than two times,  
6 but you don't know how many?

7 A I wasn't counting how many, sir, because I did  
8 not know this would go this far.

9 Q It has gone this far and we have a right to  
10 know what your testimony is going to be at trial. If  
11 you get up there and say, He has done it numerous times,  
12 I want to know what numerous means to you.

13 You have now filed at least one document, a  
14 declaration, that has appeared in here in the last six  
15 weeks in which you are talking about on numerous  
16 occasions you were subjected to this unwelcome offensive  
17 sexual harassment, and I want to know how many times  
18 between when it started in 2003 and this date that you  
19 have otherwise testified about that that he supposedly  
20 said these things.

21 A I don't have a specific number, sir, because I  
22 was not counting, but there were numerous occasions.

23 Q You didn't write it down somewhere?

1 A No, sir, I did not.

2 Q You didn't think it was appropriate to keep a  
3 log of this type of alleged inappropriate behavior?

4 A I was hoping he would stop.

5 Q You didn't keep a log, did you?

6 A No, sir, I didn't.

7 Q You didn't even make any kind of notations,  
8 did you?

9 A No, sir, I didn't.

10 Q You didn't put it in a notebook?

11 A No, sir.

12 Q You didn't write it down -- do you keep a  
13 diary?

14 A No, sir, I don't.

15 Q You didn't write it down anywhere?

16 A No, sir.

17 Q And you didn't think it was appropriate to go  
18 report this?

19 A That would have been the right thing to do,  
20 but I was afraid, sir.

21 Q You were afraid?

22 A I am afraid now, sir.

23 Q You don't have to be afraid now, because all

1 you have to do is answer the questions honestly and  
2 truthfully. And you have given, I believe, five  
3 statements under oath, and the declaration may be six,  
4 and they will all be considered by the jury, I am sure.

5 What else did he say to you between 2003 and this  
6 alleged incident that you testified about in Paige Hall?  
7 What else did he say to you beyond he liked big titties?

8 A He asked me on occasion to go with him.

9 Q Now, you are talking about before this date  
10 that he asked you to suck his dick, he asked you to go  
11 with him?

12 A Yes.

13 Q Where did he ask you to go?

14 A Away from Montgomery.

15 Q Where away from Montgomery?

16 A I think it was to Birmingham.

17 Q You think it was to Birmingham?

18 A Yes.

19 Q How many conversations did he ask you to go to  
20 Birmingham with him?

21 A Only one that I can think of.

22 Q When did this occur?

23 A It occurred sometime in 2003.

1 Q And where did it occur?

2 A It occurred in the yard at Paige Hall.

3 Q And who was present?

4 A The kids were out there and there were other  
5 staff out there, but I am sure they didn't hear that  
6 because he had called me to his truck.

7 Q To his truck?

8 A Yes.

9 Q And what did he say?

10 A That he wanted me to go away with him to  
11 Birmingham.

12 Q Was this on a business trip?

13 A I don't know.

14 Q What did you say to him?

15 A I told him that would be impossible.

16 Q And what did he say?

17 A He said that, you know, maybe not this time,  
18 but there may be another time I could go.

19 Q Did you consider this to be sexual?

20 A I considered it to be inappropriate.

21 Q Did you consider it to be sexual?

22 A I considered it to be inappropriate.

23 Q I am going to ask you the question one more

1 time, and your answer is either yes or no.

2 Did you consider it to be sexual?

3 A Yes, sir.

4 Q Why didn't you say something to him about not  
5 doing it?

6 A I did tell him on numerous occasions not to  
7 say some of the things that he said to me.

8 Q But, yet, you didn't report any of this to  
9 anybody?

10 A No, sir.

11 Q And the reason is because you were afraid?

12 A Yes, sir.

13 Q How many times were you going to let him say  
14 these things to you before you took some action?

15 A I have no idea, sir. I did not intend to tell  
16 anyone. I intended to continue to go to work.

17 Q The truth is, you thought it was sort of cute,  
18 didn't you?

19 A No, sir, I did not.

20 Q You were actually sort of impressed that he  
21 was paying attention to you, weren't you?

22 A No, sir, I was not.

23 Q Are you sure?

1 A I am positive.

2 Q Did you ever tell your girlfriend that?

3 A No, I did not.

4 Q Are you sure you didn't?

5 A I am positive.

6 Q What else between this 2003 start date and  
7 this other date that we have had that you have testified  
8 about that you say was sexual or inappropriate?

9 A There were numerous times, sir, but I can't  
10 recall at this moment.

11 Q Numerous times that he did what?

12 A Said things that were inappropriate.

13 Q What did he say?

14 A I can't recall at this moment, but there were  
15 numerous times.

16 Q I take it on these numerous times, you didn't  
17 report it to anybody?

18 A No, sir, I did not.

19 Q I take it that all of these times it was just  
20 him with you and nobody could witness it?

21 A During that time frame, yes, sir.

22 Q In other words, not one other person that can  
23 be called to either corroborate you or say it didn't

1 happen or that they heard it and could be identified?

2 It is just you and him; right?

3 A To my knowledge, sir.

4 Q Well, you would know, wouldn't you? I mean,  
5 you are testifying about a man that supposedly,  
6 according to your statements now, on a continuing,  
7 almost daily basis, made a sexual approach to you? Is  
8 that what you are telling the court?

9 A Yes, sir. He did that.

10 Q He did that on a daily basis?

11 A On an almost daily basis.

12 Q Almost daily basis. But, yet, there are no  
13 other witnesses; right?

14 A During that time frame, no, sir.

15 Q And the only other witness that you have to  
16 anything is that you say you told Farley after this  
17 other -- this event occurred about sucking his dick,  
18 that you told him he had said that? Is that the only  
19 other potential witness?

20 A I told Ms. Harris about it.

21 Q Oh, your girlfriend, your buddy; right?

22 A Yes.

23 Q You knew her in high school; right?



1 A I did.

2 Q This was your friend, your running buddy, your  
3 social friend; right?

4 A Yes, sir.

5 Q You told her. What did Ms. Harris tell you?

6 A She couldn't believe it.

7 Q What did she tell you to do?

8 A She didn't tell me to do anything.

9 Q You mean you told your friend this and your  
10 friend didn't give you any advice?

11 A No, sir.

12 Q All right. I want to make sure we understand  
13 ourselves. What other things of a sexual nature did he  
14 say to you between the start date of 2003, whenever it  
15 was, and this incident involving the suck-my-dick  
16 situation? What other things did he say to you?

17 A He told me about relationships he had had with  
18 other people.

19 Q With who?

20 A He said he was having an ongoing relationship  
21 with Ms. Clemens.

22 Q Ms. Clemens?

23 A Yes.

1 Q Who is Ms. Clemens?

2 A She works here at DYS.

3 Q Is she still here?

4 A Yes, sir.

5 Q When did he tell you about this?

6 A Probably at the end of 2003 or the beginning  
7 of 2004.

8 Q Who else did he tell you about?

9 A He had told me that there were -- there was no  
10 need for me to tell anyone because --

11 Q Tell anyone about what?

12 A About him and his behavior.

13 Q And what did you tell him?

14 A I listened.

15 Q You listened to all of these different things  
16 that he told you and you didn't say a thing to him about  
17 it?

18 A No. I didn't say there was someone I could go  
19 to because I didn't feel that there was someone.

20 Q You knew there was someone. You knew there  
21 was an official policy on reporting this type of alleged  
22 behavior, did you not?

23 A Yes, there was a policy on it, but that policy

1 was not working very well.

2 Q And you were familiar with the policy? The  
3 policy was not working very well?

4 A No. If it had been, others would have been  
5 prosecuted for what they had done.

6 Q But you didn't test the policy; you didn't  
7 even try it, did you?

8 A No, sir. I was afraid to.

9 Q Because you would lose your job?

10 A Yes, sir.

11 Q You thought that DYS would fire you because  
12 you reported sexually inappropriate behavior, alleged;  
13 right?

14 A Not necessarily DYS, but people who work at  
15 DYS, yes.

16 Q How long were you going to let this go on?  
17 I mean, according to your testimony right now, this  
18 started in 2003 and ran all the way up through this  
19 other incident, and you are testifying that it was on an  
20 almost daily basis?

21 A Yes, sir.

22 Q Is that what you told the folks when you first  
23 reported this incident?

1 A To Ms. Rankins?

2 Q Whoever you reported it to. Is that who you  
3 reported it to?

4 A I went to Ms. Rankins.

5 Q Did you tell Ms. Rankins this?

6 A I'm not exactly sure if I told her that or  
7 not.

8 Q Could it be because you are making it up now?

9 A No, sir, it cannot be.

10 Q Did you tell Ms. Spann?

11 A Yes. I told Ms. Spann the things that had had  
12 happened.

13 Q Did you tell her it was on a daily basis  
14 starting in 2003?

15 A No, I did not tell her it was on a daily  
16 basis. I think the records show, as I said, an almost  
17 daily basis.

18 Q Did you tell that to the investigator from the  
19 legal office?

20 A He didn't talk to me at that time.

21 Q He talked to you later on, did he not?

22 A He did.

23 Q Did you tell him that?

1 A I told him that it was frequent.

2 Q And your testimony is it was on an almost  
3 daily basis beginning in 2003 and certainly continuing  
4 up to this date that he allegedly said he wanted you to  
5 suck his dick?

6 A Yes, sir.

7 Q Let me ask you this: If it had been on an  
8 almost daily basis, why would you go back in a private  
9 room with him on the job there without a witness?  
10 Wouldn't you have enough common sense to know that he  
11 was going to say something to you?

12 MR. JACOBS: Object to the form of the  
13 question.

14 A No, sir. I did not think that he was going to  
15 say that, sir.

16 Q You didn't think he was going to say anything  
17 sexual, I mean, based on the fact that you have  
18 testified that he has said it literally hundreds of  
19 times, if I understand your testimony?

20 MR. JACOBS: Object.

21 Q Well, that is an exaggeration, because you  
22 can't tell me beyond two times how many times, but you  
23 say it's numerous; right?

1 A Yes, sir.

2 Q And you didn't expect he was going to say  
3 another sexual thing to you when you went back there  
4 private with him in his office?

5 A I was hoping he would stop, sir.

6 Q You were hoping?

7 A Yes.

8 Q Couldn't you have done something to stop that  
9 by not going in there?

10 A I tried to do as asked, sir.

11 Q Could you have stopped it by not going in  
12 there?

13 A By refusing to do as he had asked me?

14 Q Go into the room with him privately, yes.

15 A The door was open, sir.

16 Q Why didn't you take a witness in with you?  
17 Why didn't you take one of the gentlemen that was  
18 working with you?

19 A He had already broken policy by letting the  
20 two of them go with the children.

21 Q I am not worried about the policy, ma'am, with  
22 the children. I am worried about the facts right now,  
23 what was said. Why didn't you take one of those men

1 back there with you if you were so worried about sexual  
2 comments?

3 A Because they took the children to the dining  
4 hall.

5 Q Then why didn't you go on with them to the  
6 dining hall?

7 A Because he asked me not to. He was my  
8 supervisor.

9 Q So that made it okay for you to go on and put  
10 yourself in harm's way again; right? Right?

11 A I had to do as asked, sir.

12 Q All right. After this date in time that he  
13 allegedly asked you to suck his dick, what is the next  
14 thing that happened?

15 A The next day --

16 Q You say this was in the summer of '04?

17 A In the summer of '04?

18 Q When was this alleged event where he said he  
19 wanted you to suck his dick and you went outside and  
20 told Farley? When did that happen?

21 A I'm not exactly sure of the date.

22 Q But you are sure he was asking you on that  
23 date to do this paperwork; right?

1 A Yes.

2 Q And this lady had left; right?

3 A Yes.

4 Q What was her name again?

5 A Mary Moton.

6 Q She was another female worker there in Paige  
7 Hall?

8 A She was.

9 Q What is the next event?

10 A The next day he called me at home.

11 Q The next day?

12 A Yes, he did.

13 Q Why would he be calling you at home at all?  
14 Did y'all communicate with each other by telephone?

15 A He communicated with all of his employees by  
16 telephone.

17 Q So him calling you at home was not something  
18 out of the ordinary compared with him calling other  
19 employees; is that right?

20 A I don't know how often he called other  
21 employees.

22 Q But he did call?

23 A I assumed he did if there were changes in the



1 schedule.

2 Q Was there like a roster with the phone numbers  
3 listed or something?

4 A Yes, sir.

5 Q I take it you had to provide some type of  
6 number?

7 A Yes, sir.

8 Q Did you have like a cell phone or a home  
9 number or what?

10 A Yes.

11 Q Which?

12 A Both.

13 Q You provided both numbers?

14 A Yes, sir.

15 Q What did he call you on, the cell phone or on  
16 your home number?

17 A On my home phone.

18 Q What happened?

19 A He asked me what was the problem.

20 Q What was the problem?

21 A Yes. Why I didn't want to do as he had asked;  
22 was there another man?

23 Q And what did you say?

1           A    I told him, no, there wasn't another man. I  
2   just felt that that was inappropriate.

3           Q    Did you tell him to stop saying these things  
4   to you?

5           A    Of course I did.

6           Q    Did you tell him to stop saying these things?

7           A    Yes, sir, I did.

8           Q    You said those words?

9           A    I told him that I thought it was  
10   inappropriate. And he said, Why do you think that? I  
11   said, Because you are a married man and I don't think  
12   that you should be doing that.

13          Q    And what did he say?

14          A    He said, Well, maybe we need to go to a hotel  
15   and talk about it.

16          Q    And you say this was the next day after this  
17   happened?

18          A    The next day.

19          Q    And what happened? What did you say then?

20          A    I said, no, sir, I can't go to a hotel with  
21   you.

22          Q    Did you report him then after that, this being  
23   the umpteenth time this had happened?

1           A    No, sir, I did not.

2           Q    But you knew on that date you could report it,  
3 just like you knew the many times before; right?

4           A    Yes, sir. I did not want trouble on the job  
5 or trouble with him.

6           Q    Why didn't you want trouble with him? If you  
7 reported him, don't you think they would have taken him  
8 out of the equation?

9           A    They hadn't taken him out before then.

10          Q    You hadn't reported it? To this point in  
11 time, you had never reported him to the appropriate  
12 authorities, had you?

13          A    Yes, sir. There have been others who have  
14 reported and no one has been taken out.

15          Q    I didn't ask you, Ms. McMillian, about others.  
16 I asked you did you report him.

17          A    No, I did not, sir.

18          Q    Are you going to tell the court that there are  
19 others that have reported Mr. Hardy?

20               MR. JACOBS: Object to the form. The court is  
21 not here.

22          Q    Well, whoever may read this deposition, be it  
23 the court, the jury, or some lawyer late at night, are

1 you going to tell the reader of this deposition that  
2 others had reported Mr. Hardy?

3 A Others have reported incidents that happened  
4 to them. There was nothing done about it.

5 Q Have others reported Mr. Hardy, to your  
6 knowledge?

7 A To my knowledge?

8 Q At that point in time?

9 A No. I didn't have knowledge of that at that  
10 time.

11 Q That's right. All right.

12 What else happened after this conversation?

13 A What else happened?

14 Q Yeah. I mean, you are right in the middle of  
15 a conversation. What happens? What was said next?

16 A I got off of the phone with him.

17 Q Now, let me ask you: All of this time, 2003  
18 up until this conversation -- I take it, you said it is  
19 the next day after he allegedly asked you to suck his  
20 dick; is that right?

21 A Yes, sir.

22 Q Did he ever take any kind of negative action  
23 against you and your job?

1 A No, sir, he didn't.

2 Q He didn't punish you in any way for anything,  
3 did he?

4 A There were times when I was supposedly written  
5 up, and he said he would write me up.

6 Q Now, wait a minute. That was for incidents of  
7 different kinds; right?

8 A Yes.

9 Q I am talking about for you not doing whatever  
10 it is he wanted sexually, he never wrote you up, did he?

11 A No, sir.

12 Q He never deprived you of your pay and a raise  
13 or anything like that, did he?

14 A No, sir.

15 Q He never made you work one extra minute? He  
16 didn't do anything, did he? Did he?

17 A Yes, he did.

18 Q What did he do negative to you, that was  
19 negative, other than according to your statements?

20 A My child was sick.

21 Q Your child was sick?

22 A Yes, sir.

23 Q When was your child sick?

1           A    I am not exactly sure when it was, but he was  
2   sick. He couldn't urinate.

3           Q    Was this before or after he asked you to suck  
4   his dick, Mr. Hardy?

5           A    After.

6           Q    How far after was it?

7           A    I am not sure.

8           Q    Was it after the alleged Christmas shopping  
9   event?

10          A    Yes, sir, it was.

11               MR. WILSON: Let's take a break.

12               (Thereupon, a break was taken.)

13          Q    We pretty well finished with the incident,  
14   alleged, where he asked you to suck his dick, and you  
15   were about to tell me about something to do with a  
16   child, and we stopped at that point.

17               Tell me about it.

18          A    Mr. Hardy was supposed to be on call  
19   twenty-four hours a day, seven days a week. I worked  
20   eight to eight Saturday and Sunday.

21               My brother called me around three and said my child  
22   had not urinated all day. I asked was he sure, and he  
23   said, yes, I am watching him.

1 I said, Okay, and I called his pediatrician. She  
2 said to get him to the hospital so they could  
3 catheterize him.

4 Q When did this happen?

5 A I'm not exactly sure, sir, the date.

6 Q What year did it happen?

7 A Then I was on the twelve to eight, so it was  
8 after 2004, in 2005.

9 Q Mr. Hardy wasn't even on that same shift, was  
10 he?

11 A The eight to eight? No, it was on the  
12 weekend. 8:00 a.m. to 8:00 p.m.

13 Q And you actually had another supervisor you  
14 were supposed to call, didn't you, for your shift?

15 A He was the supervisor I was supposed to call.  
16 There was a shift supervisor there.

17 Q Let me make sure I understand this. Were you  
18 on the same shift with Mr. Hardy at the time this  
19 incident occurred with your child?

20 A This was on the weekend. He doesn't work on  
21 the weekend.

22 Q What is it that you are complaining about that  
23 Mr. Hardy did on the weekend?

1           A    He would not allow me to leave to take my  
2 child to the hospital.

3           Q    Did you talk to him?

4           A    Yes, sir, I did.

5           Q    And you think he should have allowed you?

6           A    Yes, sir.

7           Q    Why did he say he would not allow you?

8           A    He said he couldn't find anyone. He wasn't  
9 coming.

10          Q    He didn't have to come, did he?

11          A    Yes, sir.

12          Q    Oh, really?

13          A    Yes, sir.

14          Q    Is there some rule that says that if an  
15 employee calls in and wants off, the supervisor has to  
16 just drop what he is doing and run out there and replace  
17 them?

18          A    If your child is sick like that, yes, sir.

19          Q    You just think that is what he should have  
20 done?

21          A    Yes, sir.

22          Q    But there is no rule that DYS has that says he  
23 had to do that; right?



1           A    I don't know, but I know that he is on call  
2           twenty-four hours a day, seven days a week. So if there  
3           is a problem at the dorm, he should be there.

4           Q    Didn't you think this had something to do with  
5           his sexual offers to you?

6           A    Yes, sir.

7           Q    Did he say that?

8           A    No, sir.

9           Q    You just think it; right?

10          A    Yes, sir.

11          Q    You are the one that decided that; it is not  
12          Mr. Hardy; right?

13          A    I don't know what he decided, sir.

14          Q    I mean, he didn't say, okay, now it is pay  
15          back time because you wouldn't have sex with me, or  
16          anything like that, did he?

17          A    No, he did not.

18          Q    He simply said he couldn't find anyone? Did  
19          he try to find someone?

20          A    No, sir, he didn't.

21          Q    And he said that you just had to finish your  
22          detail; right?

23          A    Yes, sir.

1 Q That was his prerogative to do that, wasn't  
2 it?

3 A Not if you are on call twenty-four hours a  
4 day, seven days a week and there is a problem in your  
5 dorm.

6 Q So you think he was supposed to drop it and  
7 come because you wanted off?

8 A I don't know what he was doing, sir.

9 Q No, ma'am. Let me rephrase that. You think  
10 he should have come out there and replaced you; right?

11 A If I needed to take my son to the hospital,  
12 yes, sir.

13 Q So if there is some personal emergency that  
14 somebody has, you think he has automatically got to come  
15 out there and let them go do whatever they want to do  
16 and fill in for them; right?

17 A I could have brought him a doctor's excuse.

18 Q That's not my point. He had the prerogative  
19 to not let you off, did he not?

20 A No, sir, he did not. He was on call  
21 twenty-four hours a day, seven days week.

22 Q That is your opinion that he had to come out  
23 there; right?

1           A    He is on call twenty-four hours a day, seven  
2    days a week.

3           Q    On call? What does on call mean?

4           A    That means that he is supposed to be handling  
5    all of the problems or issues that come in that time  
6    frame.

7           Q    Well, he handled it, didn't he? He told you  
8    not to leave?

9           A    He did that.

10          Q    So he handled it. He had that prerogative,  
11   did he not?

12          A    He is on call twenty-four hours a day, seven  
13   days a week, sir.

14          Q    And he had the right to make a decision one  
15   way or the other, did he not?

16          A    He was supposed to make a decision.

17          Q    And he made one?

18          A    He did.

19          Q    What happened to your child?

20          A    I took him to the hospital when I got off, my  
21   brother and myself.

22          Q    How long was it until you got off from when  
23   you called Hardy?

1 A It was eight o'clock when I got off.

2 Q Eight o'clock p.m.?

3 A Yes, sir.

4 Q What time did you call Hardy?

5 A At three, when my brother called me, around  
6 that time.

7 Q So you had to work the other half of your  
8 shift is what you are telling us?

9 A That was over half of my shift.

10 Q Well, four hours, five hours. You don't have  
11 a lunch break; right?

12 A No, sir. No breaks.

13 Q Did you tell Mr. Hardy that you would get  
14 somebody to replace you?

15 A It is not my job to find someone to replace  
16 me.

17 Q That is not my question, ma'am. Did you tell  
18 him you would try to get someone to replace you if he  
19 would let you off?

20 A No, sir. It is not my job to do that.

21 Q What did you say to him when he refused to let  
22 you off?

23 A I said, okay, thank you.

1 Q That is all?

2 A Yes, sir.

3 Q So now you come in and testify that you  
4 believe that that was sexually related; right?

5 A I didn't say it was sexually related. I said  
6 it had to do with the situation that was going on at the  
7 time.

8 Q How old is your brother?

9 A How old is he?

10 Q Yes.

11 A At this point, I think he is twenty-nine.

12 Q Did he have a car?

13 A Did he have a car then or does he have a car  
14 now?

15 Q Did he have a car then?

16 A I'm not sure.

17 Q What was he doing at your house?

18 A He was keeping my child for me.

19 Q Why didn't he take him to the doctor?

20 A I don't know, sir. Maybe he was afraid and he  
21 called the child's mother.

22 Q He was afraid? Was he afraid of Mr. Hardy?

23 A No, he was afraid that the child was sick.

1 Q Why didn't he take the sick child to the  
2 emergency room?

3 A He called the sick child's mother.

4 Q Why didn't you call him back and say, Take him  
5 to the emergency room?

6 A Because I wanted to be there with my child.

7 Q Why didn't you have your brother take him?

8 MR. JACOBS: Asked and answered.

9 Q Let's try one more time.

10 Why did you not have your brother take him?

11 A Because my brother called the sick child's  
12 mother.

13 Q So this was all Hardy's fault?

14 A That he didn't let me off to take my child to  
15 be catheterized at the hospital.

16 Q And that he somehow kept your brother from  
17 calling a cab and taking your son to the emergency room?

18 A My brother probably didn't have any money.

19 Q Well, you have painted a terrible picture  
20 here, ma'am, that Mr. Hardy is some kind of ominous  
21 figure that controls all and that he had a duty to let  
22 you off and because he made a management decision not to  
23 let you off, that he was condemning your son. That is

1 not true, is it? You had alternatives?

2 A What were they?

3 Q How about your brother?

4 A He may not have had money for a cab.

5 Q Oh, really. How do you know? Did you ask  
6 him?

7 A He didn't have a job.

8 Q The truth of the matter is, is you just wanted  
9 to get off, and when Hardy elected not to let you off,  
10 now you are complaining about him; right?

11 MR. JACOBS: Object to the form of the  
12 question.

13 A No, sir.

14 Q Did you report Mr. Hardy to anyone for not  
15 letting you off on this date?

16 A No, sir.

17 Q Did you tell anybody about this before today?

18 A Yes, sir.

19 Q Who did you tell?

20 A I told Mr. Staton, Ms. Spann.

21 Q Who else lives with you?

22 A My mother.

23 Q How about your mother? Why didn't she take

1 him?

2 A She wasn't there.

3 Q Where was she?

4 A At this time, I don't know, but she was not  
5 there.

6 Q So your brother was there?

7 A Yes.

8 Q And you left your 29-year-old brother --

9 A He wasn't twenty-nine at the time. He is  
10 twenty-nine now.

11 Q How old was he?

12 A I'm not sure.

13 Q Was he twenty-five?

14 A I am not sure.

15 Q Was he more than twenty-one years of age?

16 A He was.

17 Q Was he an adult?

18 A He was.

19 Q You left him there, obviously, as a  
20 responsible person for your child; right?

21 A To a degree, yes.

22 Q You are not telling me you would leave him if  
23 he wasn't responsible?



1           A    I didn't think he would be ill. If he is ill,  
2   I want to be the one there.

3           Q    The simple answer to all of this is Hardy made  
4   a management decision not to let you off, and now you  
5   are throwing that in the mix; right?

6           A    No, sir.

7           MR. JACOBS: Object to the form of the  
8                   question, if it was a question.

9           MR. WILSON: It was a question.

10          MR. JACOBS: I thought it was a speech.

11          MR. WILSON: We get so many speeches, don't  
12                   we?

13          MR. JACOBS: Uh-huh.

14          Q    What else did Hardy do to you? This is  
15   getting good.

16               Were there any other instances in which he took  
17   advantage of you because of your refusal to have sex  
18   with him?

19               I'm waiting for an answer.

20          A    I'm not sure at this moment, sir, but I am  
21   sure there were.

22          Q    You're what?

23          A    I am not sure at this moment.

1 Q I take that's a no then?

2 A I'm not sure at this moment.

3 Q Are you ever going to be sure?

4 A Yes, sir.

5 Q Do you have to go back and check notes to  
6 determine that?

7 A I don't.

8 Q You don't have any notes, do you?

9 A No, sir.

10 Q How could you ever be sure of anything?

11 A I can be sure, sir.

12 If you weren't so angrily asking me these  
13 questions, it may be easier for me to answer.

14 Q I am not angry. I have a client who lost his  
15 employment, a senior manager, a gentleman that says none  
16 of this happened, and I am very concerned and I want  
17 some answers to some questions. It is easier if I get  
18 them today than to get them in front of a judge and  
19 jury. But one way or the other, we are going to get  
20 them.

21 When you say you don't know, we have a right to  
22 know, either it is yes or no, is the answer on these  
23 questions.

1 Now, is there any other instance in which he took  
2 advantage of you because of your refusal to have sex  
3 with him, alleged refusal, that is? And the answer is,  
4 yes, there is, or no, there isn't.

5 A I can't recall at this moment, sir.

6 Q When is the next event in all of this series?  
7 What is the next thing that happened?

8 We got over the suck-my-dick story. Now you have  
9 jumped ahead to what, when did you say, 2005, with your  
10 child?

11 A That is the first thing that I thought of.

12 Q What is this deal about him coming to your  
13 house and your friend, Ms. Harris, being there? Tell me  
14 what happened then.

15 A We went to a sale at Toys "R" Us.

16 Q You went from where to that sale?

17 A Work.

18 Q Work here?

19 A Yes, sir.

20 Q What date was it?

21 A It was right after Christmas.

22 Q It was after Christmas day?

23 A It was an after-Christmas sale.

1 Q Was it after Christmas day? It wasn't the  
2 25th?

3 A I'm not exactly sure, whenever they had  
4 their --

5 Q Let's stop. The 25th is Christmas day. It  
6 was after Christmas; right?

7 A It was an after-Christmas sale at Toys "R" Us.

8 Q Was it on the next day or the next day or  
9 when?

10 A I'm not exactly sure.

11 Q Your testimony is that you and Ms. Harris had  
12 worked out here that day?

13 A Yes, sir.

14 Q What happened?

15 A We went to the sale.

16 Q Together?

17 A Yes.

18 Q In separate vehicles or the same car?

19 A The same car.

20 Q How did you come to work that morning?

21 A We rode together.

22 Q Whose car did you come in?

23 A Ms. Harris's car.

1 Q You went from here. What time did you get  
2 off?

3 A At four.

4 Q Four p.m. Was it dark when you got off?

5 A No.

6 Q Was it dark when you got down to Toys "R" Us?

7 A No.

8 Q How far is it to Toys "R" Us from here?

9 A It is right down Atlanta Highway.

10 Q Is that the way y'all went?

11 A Yes.

12 Q How long were you at Toys "R" Us?

13 A I am not exactly sure how long we were there.

14 Q What did you do at Toys "R" Us?

15 A We shopped.

16 Q And what did you buy?

17 A Toys.

18 Q How many?

19 A We had quite a few.

20 Q Did you have a basket full?

21 A We had both our things in the same basket.

22 Q Who were you buying for?

23 A Children.

1 Q Which children?

2 A Family members.

3 Q These were not toys for your child for  
4 Christmas?

5 A Some of them were.

6 Q You had not already had Christmas?

7 A I worked Christmas, so I wasn't with my child  
8 during Christmas.

9 Q So you hadn't had the Christmas celebration  
10 yet with your child?

11 A No. I wanted him to have toys when he came  
12 back home.

13 Q Where had he been?

14 A He had been down to Camden, Alabama.

15 Q With whom?

16 A With my mother, my grandmother, and my great  
17 grandmother.

18 Q He hadn't been with his father?

19 A No, sir, he hadn't.

20 Q Who is his father?

21 A Anthony Wills.

22 Q Were you married when you had your child?

23 A No, sir, I wasn't.

1 Q Have you ever been married?

2 A No, sir.

3 Q Is this your only child you have?

4 A Yes, sir.

5 Q How old is your child?

6 A Seven.

7 Q How old was he when this occurred?

8 A I guess about five.

9 Q We are talking about what year? What year did  
10 this happen in?

11 A 2004.

12 Q What happened? You bought the toys and then  
13 what happened?

14 A We bought the toys and we left the store and  
15 proceeded to my house.

16 Q What happened there?

17 A We got to the driveway. My cell phone rang.  
18 It was Mr. Hardy.

19 Q And what did Mr. Hardy say?

20 A He said that he needed to speak with me. I  
21 told him that I was off.

22 Q What did he need to speak to you about?

23 A He said it was something detrimental to my

1 future career here at DYS.

2 Q You have heard his testimony that he was  
3 bringing you a check or a check stub, haven't you?

4 A Yes, sir.

5 Q He brought the check stub, didn't he?

6 A No, sir.

7 Q He didn't bring it?

8 A No, sir.

9 Q He didn't bring anything?

10 A No, sir.

11 Q You are saying he made all of that up?

12 A Yes, sir.

13 Q That was a lie?

14 A Yes, sir.

15 Q He didn't bring any kind of statement?

16 A No, sir.

17 Q So he called you and said he needed to speak  
18 to you?

19 A Yes, sir.

20 Q Now, this is the same Mr. Hardy who has asked  
21 you to suck his dick, according to you, numerous times,  
22 and had been saying things sexual to you, and he is  
23 calling and saying to you he wants you to let him come



1 to your house; right?

2 A He said he needed to speak with me about  
3 something detrimental to my future career here at DYS.

4 Q Did you say, I will talk to you when I see you  
5 at work?

6 A I tried to tell him that I was at home and I  
7 told him maybe we could discuss it later. He said that  
8 he needed to talk to me about it then.

9 Q So what happened next?

10 A I told him that I was at home. And he said --  
11 and I asked him what it was about. He said something to  
12 the effect of -- something that Mr. McCollum had said.

13 Q So what did you tell him?

14 A He asked me had Mr. McCollum disrespected me  
15 at work, and I told him no.

16 Q Then what did he say?

17 A He said he needed to speak with me; it was  
18 important. And I told him okay.

19 Q Did you tell him how to get to your house?

20 A I didn't get a chance to.

21 Q What do you mean, you didn't get a chance to?

22 A I told him that I lived in Spring Valley, and  
23 I told him when he got to the sign in Spring Valley, I

1 would give him directions.

2 Q Did he know what street you lived on?

3 A Obviously so.

4 Q Had he ever brought you home before?

5 A No, sir.

6 Q Had he ever been to your house, to your  
7 knowledge, before?

8 A No, sir.

9 Q So what happened?

10 A We went into the house with bags.

11 Q You and Mr. Hardy?

12 A Ms. Harris.

13 And she said, do you really think he is going to  
14 come, and I said, no, I really don't think he is going  
15 to come. So we put the bags on the table with the  
16 wrapping paper and tape and stuff.

17 She said, Do you think it will be okay if we go  
18 ahead and have a drink? And I told her, Sure, because  
19 this is my house and I don't think he is coming anyway.

20 Q So what did you do, make some drinks?

21 A Yes, we did.

22 Q And he hadn't shown up at that point; right?

23 A While we were in the process of doing that,

1 someone knocked on the door. She answered the door, and  
2 it was him.

3 Q How long did it take him to get over there?  
4 Fifteen minutes? Twenty minutes?

5 A I am not exactly sure. It wasn't a very long  
6 time.

7 Q What time of day would this have been?

8 A Evening.

9 Q Evening. So this was after you had finished  
10 your shopping and approximately the time you came home?

11 A Yes.

12 Q So sometime between what, six and seven?

13 A It may have been before that. I'm not sure.

14 Q Was your son back home yet?

15 A No, sir.

16 Q And the other person there was Ms. Harris?

17 A Yes.

18 Q Ms. Veronica Harris, your friend?

19 A Yes.

20 Q What happened?

21 A He came in.

22 Q How was he dressed?

23 A He had on a sweater and some slacks.

1 Q I take it, it must not have been very cold  
2 that night? He didn't have a jacket on?

3 A I don't recall if he had a jacket on.

4 Q Did you let him in the house?

5 A Ms. Harris opened the door and let him in.

6 Q Why didn't you meet him at the door and just  
7 talk to him outside?

8 A I wasn't the one who answered the door. She  
9 answered the door and allowed him in.

10 Q But wait a minute. This is your house?

11 A Yes.

12 Q When the doorbell rang, you knew it was him,  
13 didn't you?

14 A No, I did not, because I didn't know he knew  
15 where I lived.

16 Q So Ms. Harris let him in?

17 A Yes.

18 Q Ms. Harris's fault?

19 A Her fault?

20 Q That she let him in the house?

21 A No, I don't think it was her fault at all.

22 Q Ms. Harris let him in. What happened next?

23 A He came into the house, said that it was

1 really nice and would it be okay if he used the  
2 restroom.

3 Q And?

4 A He went to the restroom.

5 Q Basically, he just came in. Did he even sit  
6 down, or did he just ask to use the restroom?

7 A He didn't even sit down. He asked to use the  
8 restroom.

9 Q Which restroom did he use?

10 A He used the restroom for the public in my  
11 home.

12 Q Was it in the front room or something?

13 A Yes, it is next to the front.

14 Q What did you do while he was using the  
15 restroom?

16 A I continued to get the bags out of the floor  
17 and put the rest of them on the table, take the stuff  
18 out of the bags.

19 Q When he finished in the restroom, what did he  
20 do?

21 A He came out and I asked him to sit down.

22 Q You asked him to sit down?

23 A Yes.

1 Q And then what happened?

2 A We started to chitchat, myself, him and Ms.  
3 Harris, about the goings on at the campus. We had a  
4 drink by that time.

5 Q We had a drink?

6 A Yes, myself and Ms. Harris.

7 Q All right. What happened?

8 A I asked him if he would like a drink.

9 Q And?

10 A He said yes.

11 Q And what happened?

12 A And he asked us what were we drinking and I  
13 told him. And he said he only drank Long Island Iced  
14 Tea when he was in New Orleans.

15 Q Didn't he tell you he hadn't had a drink in  
16 ten years?

17 A No, sir, he did not.

18 Q He didn't tell you that?

19 A No, sir.

20 Q He just told you he drank Long Island Iced  
21 Tea?

22 A That is what he said.

23 Q How did New Orleans come into this?

1 A He brought that up; not me.

2 Q So you happened to have Long Island Iced Tea?

3 A Yes, sir.

4 Q How do you make a Long Island Iced Tea?

5 A I bought it from the liquor store already  
6 made.

7 Q So what did you do? Did you go make him a  
8 drink?

9 A I did.

10 Q And he did what, sat there and talked to Ms.  
11 Harris?

12 A Yes.

13 Q Did he make any sexual offers to her?

14 A I don't know.

15 Q She didn't report any to you?

16 A No, she did not.

17 Q What happened then?

18 A I gave him the drink and I sat back down.

19 Q And?

20 A We resumed talking.

21 Q About what?

22 A Just stuff, whatever was going on in the  
23 dorms, things like that.

1 Q Did he ever get around to this topic you say  
2 he called you about?

3 A No.

4 Q You mean, he never talked to you about the  
5 gentleman disrespecting you?

6 A No.

7 Q This turned in to just a social visit, didn't  
8 it?

9 A Basically.

10 Q Why didn't you tell him to get up and leave?

11 A I was still waiting on him to talk about what  
12 had happened.

13 Q What did Ms. Harris do?

14 A Ms. Harris got up and she went into the  
15 kitchen.

16 Q Which is located where in relationship to  
17 where you were sitting?

18 A The next room.

19 Q And what was she doing in the kitchen, if you  
20 know?

21 A I think she may have made another drink for  
22 herself, and she started wrapping some of the gifts.

23 Q What about Mr. Hardy, did he have more than



1 one drink?

2 A He had only one.

3 Q What happened then?

4 A What happened then was he said he felt like he  
5 was hot and he proceeded to pull his sweater up around  
6 his neck.

7 Q And did he have on anything under the sweater  
8 like a shirt, T-shirt?

9 A He did. He had on an A-line T-shirt.

10 Q What is an A-line T-shirt? Is that like a  
11 man's undershirt? A round neck T-shirt or what?

12 A A man's T-shirt with no sleeves. And he said  
13 he was hot, and he pulled that up, revealing his chest.

14 Q Was this after he had had a drink?

15 A Yes.

16 Q How much of his drink did he consume?

17 A He drank the entire glass.

18 Q He drank the entire glass?

19 A Yes.

20 Q How large a glass was this Long Island Tea in?

21 A It was actually in a wine glass.

22 Q Is this a pre-mixed quantity of Long Island  
23 Tea or you pour out whatever you want?

1 A It is pre-mixed.

2 Q See, I am not a Long Island Tea drinker, so  
3 you are going to have to help me here. Is it pre-mix  
4 and you have got to put water with it?

5 A No, you don't put anything with it.

6 Q You just pour it over ice?

7 A Yes.

8 Q Is that what you did?

9 A Yes.

10 Q Has it got some amount of liquor in it  
11 already?

12 A Yes.

13 Q How much booze does it have in it?

14 A I don't know.

15 Q My impression of a Long Island Tea is that it  
16 would knock you down pretty good. Is that a pretty good  
17 drink?

18 A I don't know, because I have never been  
19 knocked down by a drink.

20 Q How many Long Island Teas does it take to give  
21 you a buzz?

22 A I am not sure.

23 Q How many have you drank at one time?

1 A How many Long Island Teas have I drank?

2 Q Yes.

3 A In a wine glass, maybe two.

4 Q Maybe two. He had one. It was after he  
5 consumed it that he said he got hot, wasn't it?

6 A That is what he said.

7 Q You said he pulled his T-shirt up or just his  
8 sweater?

9 A His sweater and then he pulled his T-shirt up.

10 Q And what did he do?

11 A He rubbed across his chest with his hand and  
12 he asked me to lick his chest.

13 Q He asked you to lick it?

14 A Yes.

15 Q And what did you say?

16 A No, sir. I can't do that.

17 Q Did he say that in a normal voice where Ms.  
18 Harris could hear him?

19 A No, he did not, but Ms. Harris saw him and she  
20 came out.

21 Q What kind of voice did he say it in? Did he  
22 whisper it?

23 A No. He didn't whisper it. He said, Why don't

1     you lick my chest.

2           Q     This guy's sneaky, isn't he? He says it in a  
3     voice where Harris can see it but not hear it; right?  
4     Is that your testimony?

5           A     I am not sure whether she heard him or not.

6           Q     You know whether she heard it or not?

7           A     I do?

8           Q     You haven't discussed it with her?

9           A     Not to that degree. I don't know if she heard  
10    him or not.

11          Q     So he says, Lick my chest?

12          A     Uh-huh.

13          Q     What did you say?

14          A     I said, no, sir.

15          Q     Did you say get up and get out?

16          A     No. I didn't say get up and get out.

17          Q     Did you say anything other than, no, sir?

18          A     That is what I said and Ms. Harris came in,  
19    and she asked me did she need to leave.

20          Q     And you said what?

21          A     Hell, mother-fucking no, because he is about  
22    to leave.

23          Q     Why did you say that? Was it the booze

1 talking at that time?

2 A No, sir.

3 Q Why did you say those three words?

4 A Because I was afraid of him.

5 Q Why didn't you tell him to get up and get out  
6 while you had a witness there?

7 A He did leave while the witness was there.

8 Q The witness went and took a nap, didn't she?

9 A After this.

10 Q Are you testifying that he left while she was  
11 still standing there?

12 A No. He didn't leave while she was still  
13 standing there.

14 Q The truth is, she went off in another room and  
15 disappeared, didn't she?

16 A She went to the living room.

17 Q She went to the bedroom and then went to sleep  
18 in your bed, too, didn't she?

19 A Yes.

20 Q She was out of sight and out of hearing range,  
21 wasn't she?

22 A Yes.

23 Q And you stayed in there with him for a

1 substantial period of time?

2 A Substantial, no, sir.

3 Q More than five minutes?

4 A Yes, sir.

5 Q More than ten minutes?

6 A I am not sure how many minutes it was because  
7 that is when he started telling me how he wasn't going  
8 to protect me anymore. He said he had been protecting  
9 me since I had been working at DYS and that he wasn't  
10 going to be protecting me anymore.

11 Q This was sexual, you thought?

12 A Sexual was him asking me to lick his chest.

13 Q And besides that, you said, no; right?

14 A Of course.

15 Q This was not done on duty, was it? He was at  
16 your house and had been invited into your house?

17 A He was.

18 Q You had served him a drink?

19 A I had.

20 Q Were y'all playing Christmas music or  
21 rock-and-roll music or something there in your house?

22 A No, sir.

23 Q Wasn't music being played?

1 A I don't remember.

2 Q Did y'all have the radio on or music?

3 A I don't recall.

4 Q This was a social occasion, right, afterhours?

5 A For myself and Ms. Harris.

6 Q Well, obviously, you had let him into your  
7 presence?

8 A We did.

9 Q You had served him a drink?

10 A I did.

11 Q You had offered him a sit-down?

12 A Hospitality, yes.

13 Q That's right. And he had stayed almost an  
14 hour or hour and a half, didn't he?

15 A I'm not sure exactly what time it was.

16 Q What time did he leave?

17 A I'm not sure exactly what time it was.

18 Q Y'all had a long conversation, didn't you,  
19 after Ms. Harris left the room?

20 A No, because he had gotten visibly very angry.

21 Q He did?

22 A Yes, sir.

23 Q What did he say to you?

1           A    He said, like I said, that he had been  
2   protecting me since I had been working out at DYS.

3           Q    How many times did he say that?

4           A    He said that once.

5           Q    Then what did he say?

6           A    He said that he would no longer be doing that,  
7   and that the relationship that I had with Farley will  
8   change. And he said that if he didn't get me, then the  
9   clique would.

10          Q    If he didn't get you, the clique would?

11          A    Yes.

12          Q    Am I understanding that this was all because  
13   you wouldn't lick his chest?

14          A    I don't know what he was thinking.

15          Q    Why did he choose this? Had he given you an  
16   ultimatum to go with him to a motel again?

17          A    That day?

18          Q    Yes, that day.

19          A    No, sir.

20          Q    Had he asked you to suck his dick again?

21          A    That day, no, sir.

22          Q    Had he said anything else sexual to you, other  
23   than lick my chest?



1 A That was enough.

2 Q No. I am asking you: Had he said anything  
3 else other than that?

4 A No, sir.

5 Q So, suddenly, he becomes very aggressive in  
6 terms of telling you that he is not going to protect  
7 you; right?

8 A Yes, sir.

9 Q Why did he do that?

10 A I don't know.

11 Q But he did protect you at a later time from  
12 other things, didn't he?

13 A Did he?

14 Q I am asking you. I am not the witness.

15 A Not to my knowledge.

16 Q He never took care of you on different  
17 situations in your dorm operation?

18 A Took care of me?

19 Q Yes. Took your side on certain issues that  
20 might have come up or anything like that? He never did  
21 anything else to benefit you; is that what you are  
22 telling me?

23 A Not anything that a supervisor wouldn't do.

1 Q He did what a supervisor would do, though, and  
2 helped you out on other occasions, didn't he?

3 A Helped me out?

4 Q Other occasions, as a supervisor, in the next  
5 year? He was still your supervisor, wasn't he?

6 A Yes. He did what a supervisor was supposed to  
7 do.

8 Q He didn't abandon you, did he?

9 A Abandon me?

10 Q Abandon you. He didn't ignore you when you  
11 made requests to him for different things in terms of  
12 whatever you need from a supervisor in 2005, did he?

13 A I don't understand what you are saying.

14 Q How long was he your supervisor in 2005?

15 A Up until June.

16 Q Six months. Other than this occasion you have  
17 testified about previous that he wouldn't let you off  
18 when you wanted to go because your son hadn't urinated,  
19 did he ever take another negative action against you in  
20 that 2005 period?

21 A Did he ever take another negative action?

22 Q Right. As a supervisor, did he ever deny you  
23 time off? Deny you a raise? Did he ever do that?

1 A No.

2 Q Did he ever make you work some time you  
3 weren't supposed to be working?

4 A No.

5 Q Did he ever make you work someplace you  
6 weren't supposed to be working?

7 A Someplace I wasn't supposed to be working?

8 Q Yes. Some extra duty that is above and beyond  
9 whatever your normal duties are?

10 A No.

11 Q He didn't do anything to you other than what  
12 was normal; is this right?

13 A What a supervisor should have done.

14 Q In fact, you went to him and asked him for a  
15 transfer, did you not?

16 A I did.

17 Q And you told him that you had another job,  
18 didn't you?

19 A I did.

20 Q Which was a bald-faced lie at that point?

21 A Exactly.

22 Q That's right.

23 A I would have told him anything to --

1 Q I didn't ask you what you would have done. I  
2 asked you, you told him a lie, didn't you?

3 A Yes, sir, I did.

4 Q And when did you do that?

5 A I am not exactly sure of the date.

6 Q Where did you do it?

7 A Where did I tell him I had the job?

8 Q Yes.

9 A At a McDonald's.

10 Q At a McDonald's?

11 A Yes, sir.

12 Q How did he come to go to a McDonald's with  
13 you?

14 A Because I called him.

15 Q You called him?

16 A Yes, I did.

17 Q And you went to a McDonald's?

18 A Yes, sir.

19 Q Where? Which McDonald's?

20 A McDonald's East-South Boulevard.

21 Q Why that McDonald's?

22 A Because that was closer to where he was coming  
23 from.

1 Q How did you know that?

2 A Because he told me.

3 Q Did you ask him to go to McDonald's?

4 A I did.

5 Q In fact, you bought him some food, didn't you?

6 A No, I did not buy him food.

7 Q You didn't buy him a drink or hamburger or  
8 something?

9 A No, I did not.

10 Q What did you do?

11 A I told him I wanted to be transferred from his  
12 dorm.

13 Q No. No. No. What did you do? Did you go  
14 inside the McDonald's or stay in the car?

15 A We went inside the McDonald's.

16 Q You sat down?

17 A Yes, sir.

18 Q Did you purchase any food?

19 A No, sir.

20 Q You just sat down in McDonald's to talk;  
21 right?

22 A Yes, sir.

23 Q You told him what?

1           A    I told him that I wanted to transfer from his  
2   dorm --

3           Q    And what did he tell you?

4           A    -- and I was told by Mr. Bolling that I should  
5   confer with him first.

6           Q    And what did he say?

7           A    He said, So you went to him first without  
8   telling me? I told him, yes, but I am here to tell you  
9   now that I want to transfer.

10          Q    What else did you tell him?

11          A    I told him that I had another job and that I  
12   wanted to transfer because my hours would conflict.

13          Q    And what did he say?

14          A    He told me it would take me two years to get a  
15   transfer, and if I didn't believe him, he would send me  
16   to Mr. Tyler.

17          Q    And that was based upon what length of time it  
18   took for people to get transferred?

19          A    Two years?

20          Q    What explanation did he give you for it being  
21   two years, is what I am asking?

22          A    He didn't give any explanation.

23          Q    Did you ask him why two years?

1           A    I did. He said, well, if you don't believe  
2   me, I am going to send you to Mr. Tyler.

3           Q    Who is Mr. Tyler?

4           A    Mr. Tyler is specialist here.

5           Q    That is language I don't understand. What do  
6   you mean a "specialist"?

7           A    Mr. Tyler would be the next position above  
8   his.

9           Q    So he was sending you to someone else other  
10   than himself that supposedly would know about this;  
11   right?

12          A    That it would take two years?

13          Q    Yes.

14          A    Yes.

15          Q    Did you go see Mr. Tyler?

16          A    I told him, no, thank you.

17          Q    Anything else in that conversation?

18          A    I think that was it. The last thing he said  
19   to me was, I'm not out to get you.

20          Q    Did you tell him he was a good man?

21          A    Did I tell him he was a good man?

22          Q    Or a good boss, or something to that effect?

23          A    At that time?

1 Q Yes.

2 A That day?

3 Q Uh-huh.

4 A It is possible. I didn't want him to be mad  
5 with me.

6 Q All right. Did that happen on or about May  
7 27th, 2005?

8 A I don't know.

9 Q Did it happen in 2005?

10 A Yes.

11 Q When did you report all of this alleged sexual  
12 harassment that Mr. Hardy was allegedly perpetrating?  
13 When did you report this?

14 A In June.

15 Q Why did you report it?

16 A My goal was not to report it. My goal was to  
17 go down there to get a transfer.

18 Q This was a transfer for the same reasons you  
19 had asked Hardy for earlier; right?

20 A No, sir. I did not have a job.

21 Q I am sorry. I misstated. Excuse me.

22 I am saying, you were still trying to get a  
23 transfer?



1 A Yes, sir.

2 Q And, really, you were upset because Mr. Farley  
3 wouldn't let you transfer, wasn't it, or was there  
4 another person?

5 A Mr. Farley?

6 Q Maybe I am wrong. You had another supervisor  
7 over you at that point in time, didn't you?

8 A Who?

9 Q I am asking you.

10 A No.

11 Q You didn't have another supervisor directly  
12 over you?

13 A Oh, Mr. Smith.

14 Q Mr. Smith. And you had asked Mr. Smith to be  
15 able to transfer, hadn't you?

16 A No, sir.

17 Q You hadn't, okay. So you have now talked to  
18 Hardy and you go and you file a complaint, and your goal  
19 is, as you say, to get a transfer?

20 A Yes, sir.

21 Q Why did you think filing a complaint would get  
22 you a transfer?

23 A I didn't file a complaint. I didn't go to

1 file a complaint. I went to get a transfer.

2 Q Who did you go to see?

3 A When I went down there, I was told that all of  
4 the administrators had gone to a seminar in Eufaula, and  
5 there were two people there, Mr. Tyler and Ms. Rankins.

6 Q And you didn't speak to Mr. Tyler?

7 A No, sir.

8 Q And that is the man that Hardy had told you to  
9 see, wasn't it?

10 A Exactly.

11 Q So you chose to see who?

12 A Ms. Rankins.

13 Q Ms. Rankins is who, for the record?

14 A She is a specialist, too.

15 Q So you went in and this is the same Ms.  
16 Rankins that ultimately got you to tell her that Mr.  
17 Hardy was allegedly committing sexual harassment; is  
18 that right?

19 A Yes, sir.

20 Q But that wasn't your goal to report it when  
21 you went in there?

22 A Exactly.

23 Q Who suggested there was sexual harassment, you

1 or Ms. Rankins?

2 A I told her.

3 Q You told her. How did this come about? Tell  
4 me what happened.

5 A When I went in there, I told her I wanted to  
6 transfer to another dorm. And she asked me why, and I  
7 told her I just wanted a different environment. She  
8 asked me what do I mean by different environment. I  
9 told her I had worked at Paige for a while and I wanted  
10 to go to another dorm. She continued to say, there has  
11 to be something else going on. Tell me what it is.  
12 What else is going on?

13 Q Then what was said?

14 A I told her there was nothing going on.  
15 Everything was fine. And she said, No, there has to be  
16 something. Why do you want to leave? Why do you want  
17 to leave?

18 Q You were not even on the same shift with Hardy  
19 at this point, were you?

20 A No, sir.

21 Q So you basically weren't even seeing Hardy,  
22 except occasionally you would see him, but it was rare,  
23 wasn't it?

1           A    I didn't see him as much, but I talked with  
2           him on the phone. He would call me.

3           Q    Did you ever call him?

4           A    I called him that one time.

5           Q    How many times did he call you?

6           A    I'm not sure of the number of times.

7           Q    Was it like to give you duties or  
8           responsibilities?

9           A    No, sir.

10          Q    It was social calls?

11          A    Yes, sir.

12          Q    Why didn't you put a stop to that?

13          A    I didn't want to make him mad, sir.

14          Q    You were afraid for your job; right?

15          A    Exactly. I just wanted to get away from him.

16          Q    All right. So what happened? What did  
17          Ms. Rankins do?

18          A    She said, So you think Mr. Hardy is  
19          invincible, don't you? And I told her yes.

20          Q    And?

21          A    And she said, Well, she was going to show  
22          Mr. Hardy the power of Phyllis Rankins.

23          Q    It sounds like she had something against

1 Mr. Hardy?

2 A I don't know.

3 Q What do you think she meant when she said  
4 that?

5 A I don't know.

6 Q But she bragged that she was going to show  
7 Mr. Hardy; am I correct?

8 MR. JACOBS: Object to the form of the  
9 question.

10 Q The question is: Did she brag to you, I am  
11 going to show Mr. Hardy the power of Phyllis Rankins?

12 MR. JACOBS: Object to the form of the  
13 question.

14 A No, she said --

15 Q What did she say?

16 A I am going to show him the power of Phyllis  
17 Rankins. She didn't say anything about bragging.

18 Q I am saying to you, wasn't she bragging to  
19 you?

20 A I didn't take it that way.

21 Q But she did say the following words or words  
22 to the effect, that she, Phyllis Rankins, was going to  
23 show Mr. Hardy the power of Phyllis Rankins?

1 A She did.

2 Q What does that mean?

3 A I don't know.

4 Q You had no idea what that meant?

5 A No, sir.

6 Q It sounds a little braggadocios to me.

7 Doesn't it sound like she had something against  
8 Mr. Hardy?

9 A I don't know, sir.

10 Q What did Phyllis Rankins then tell you to do?

11 A First, she told me she needed me to write down  
12 what had happened, and then she said, no, don't worry  
13 about that. I want you to go up front to speak with  
14 Debra Spann. Do you know where she is?

15 Q And as a result of that, you did what?

16 A I went to see Ms. Spann.

17 Q Was that the last time Mr. Hardy was your  
18 supervisor?

19 A Yes.

20 Q When you left that office and you returned to  
21 whatever duty you returned to, you went to a different  
22 dorm, did you not?

23 A Yes, sir.

1 Q Mr. Hardy has had nothing else to do with you  
2 from a professional point of view since that point in  
3 time, has he?

4 A Exactly.

5 Q He hasn't taken any action against you in any  
6 way, has he?

7 A Yes, he has.

8 Q Oh, has he?

9 A Uh-huh.

10 Q How has he done that?

11 A He has had others write things about me that  
12 weren't true.

13 Q How do you know he had them to do it?

14 A Because that woman doesn't know me.

15 Q What woman?

16 A The one that wrote the statement, that she  
17 came to the dorm and I was saying that he was such a  
18 nice person.

19 Q How do you know that he had her write that  
20 statement? Is that your assumption?

21 A Yes, sir.

22 Q You don't know that for a fact, do you?

23 A How would she know to write it?

1 Q Maybe his lawyer contacted her. Could that  
2 have happened?

3 A Maybe.

4 Q Maybe a friend of his, without even  
5 coordinating with him. That could have happened,  
6 couldn't it? You don't know that it didn't, do you?

7 A That's possible.

8 Q You just think because this woman wrote the  
9 statement that somehow Hardy had influence over her to  
10 make her write the statement, didn't he?

11 A I didn't say he had influence over her.

12 Q Well, caused her to write the statement. Are  
13 you saying that that woman, whoever that is, wrote a  
14 false statement?

15 A I didn't read her entire statement.

16 Q What is the name of this woman?

17 A I forgot.

18 Q You forgot. What else did he do to you since  
19 he ceased to be your supervisor? What other detrimental  
20 things has he done to you?

21 A I know that he got -- well, I guess Mr. Dortch  
22 did that, the petition that they had going around.

23 Q That's right. Mr. Dortch did that, didn't he?



1 You know yourself that Mr. Hardy didn't do that; Mr.  
2 Dortch did that?

3 Answer my question, please.

4 MR. JACOBS: Object to the form of the  
5 question.

6 Q You just said Mr. Dortch did it, didn't you?

7 A I am sure he probably had him to do it.

8 Q You are guessing now, aren't you? Because you  
9 don't know one way or the other, do you?

10 A I don't know for sure.

11 Q Who is Mr. Dortch?

12 A He was a fellow co-worker at Paige Hall.

13 Q He is another supervisor?

14 A No.

15 Q He is a fellow co-worker, in terms of your  
16 position?

17 A Yes.

18 Q I didn't go into all of those technical things  
19 about your job, because a lot of that was gone in to on  
20 Tuesday. But just for the record, what is your job?

21 A I am a youth services aid.

22 Q And you have been in that same job the whole  
23 time; right?

1 A Yes.

2 Q And you get annual raises and reviews?

3 A Yes.

4 Q Did you get raises during that time?

5 A Yes.

6 Q Did you ever get held back from a raise by  
7 Mr. Hardy?

8 A No.

9 Q Do you know what you make today, what is your  
10 salary today?

11 A It is about a little over two thousand dollars  
12 a month.

13 Q And I believe your testimony last week was you  
14 have a college degree?

15 A No, sir.

16 Q I have forgotten. Are you close -- Did you  
17 not go to college?

18 A Yes, sir.

19 Q And did you not go for two or three years?  
20 Refresh my memory. How much college do you have?

21 A I have two classes short of a Bachelor's  
22 degree.

23 Q You said two classes. Six hours or eight

1 hours, somewhere in there?

2 A Yes, sir.

3 Q All right. I want to make sure I understand  
4 what your testimony is about, about your going to a  
5 psychologist or any other medical doctor associated with  
6 anything. Are you testifying that all of this started  
7 after Hardy started saying sexual things to you?

8 A Yes, sir. It started in 2003 at some point.

9 Q And you had never been to a psychiatrist  
10 before then?

11 A Not for anything of this nature, no.

12 Q What had you been to one for? Had you been to  
13 one before?

14 A When I was about twelve years old.

15 Q And how long were you under a psychiatrist's  
16 treatment then?

17 A Not very long.

18 Q And you had not been to one since then?

19 A No, sir.

20 Q Who referred you to the psychiatrist?

21 A My family doctor.

22 Q And that occurred in 2003?

23 A Yes, sir.

1 Q And your family doctor was who?

2 A Dr. Carter.

3 Q What is Dr. Carter's first name? Is that the  
4 female Dr. Carter?

5 A Yes.

6 Q The one that died?

7 A No, sir. She is at Jackson Family Care.

8 (Thereupon, a break was taken.)

9 Q Ms. McMillian, is there anything else of a  
10 sexual nature now that Mr. Hardy allegedly did from  
11 2003, 2004, and 2005 time frame, other than what you  
12 have testified about?

13 A During April of 2005, he asked me to go to a  
14 hotel with him to talk, and I said, no.

15 Q How did he ask you to do that? By phone or in  
16 person?

17 A This was in person.

18 Q And you said, no. And what did he say?

19 A He said that would give us a chance to talk.  
20 Maybe we could have some drinks.

21 Q Well, was that anything more than simply  
22 asking you to go to a restaurant in a motel and have a  
23 drink? Is that what he basically asked you to do?

1 A He asked me to go to a hotel with him.

2 Q Like check in to the hotel? That is what you  
3 thought he meant?

4 A Yes.

5 Q Did he say that?

6 A No.

7 Q What did he say?

8 A He asked me to go to a hotel with him so that  
9 we could talk, maybe have some drinks.

10 Q And you said no?

11 A Yes, sir, I said, no.

12 Q And he said what?

13 A He said we could just go there and talk, you  
14 know.

15 Q And that was the end of it?

16 A Yes.

17 Q Anything else?

18 A Not that I can think of, sir.

19 Q And then you filed your discrimination charge  
20 on July the -- I am trying to find the date on this  
21 thing -- on or about July 25th; is that correct? I am  
22 sorry. July the 12th, that is when you filed? July  
23 12th, 2005?

1 A Yes.

2 Q And by that time, you had already discussed  
3 this with Ms. Rankins; right?

4 A Yes.

5 Q Did you have legal counsel when you did this?

6 A Yes.

7 Q And that was not your current counsel; that  
8 was another lawyer; right?

9 A Yes, sir.

10 Q I am going to make this Charge of  
11 Discrimination our Exhibit Number 2. I am going to put  
12 it over at the bottom down here. This is a copy from  
13 another file, so it is not a totally clear copy. Pass  
14 that to counsel. I am sure you have seen it before.

15 (Thereupon, Hardy Exhibit No. 2  
16 was marked for identification.)

17 Q Did you provide this information that is in  
18 this document? Did you provide that information to your  
19 attorney?

20 A Yes.

21 Q Was that information correct and accurate when  
22 you provided it?

23 A Yes, sir. There was a mistake that my

1 attorney made.

2 Q What is the mistake?

3 A The suck his dick, he asked me that. The oral  
4 sex part was said numerous times, but there was an  
5 occasion when he asked me to suck his dick. I spoke  
6 with my attorney about that, because I was upset at the  
7 time this was done. He and his assistant typed this up  
8 for me. I signed it after I read it.

9 Q You signed it, though?

10 A I was upset at that time, yes.

11 Q Why were you upset?

12 A Why was I upset?

13 Q Yes. You were upset at Mr. Hardy?

14 A I was mentally and physically upset, yes.

15 Q So what is the error in that statement?

16 A Almost on a daily basis, he requested I suck  
17 his dick. He didn't say actually, "suck my dick" but  
18 that one time, but he did mention oral sex.

19 Q Any other change?

20 A That was it. And my attorney was supposed to  
21 have that changed, Roderick Cooks.

22 Q But he didn't and this is what was filed?

23 A I assume.

1 MR. WILSON: Make that part of the record,  
2 please.

3 Q I am going to have marked as Number 3 for  
4 Mr. Hardy a copy of the Declaration of Tera McMillian,  
5 which is Document 44-2. I think your attorney filed it  
6 here recently. I believe it was filed in opposition to  
7 a pleading from DYS. I will show you a copy of this.

8 MR. WILSON: I will mark it as Defendant's 3,  
9 and I believe you have a copy, counsel.

10 MR. JACOBS: Yes, I have read it.

11 (Thereupon, Hardy Exhibit No. 3  
12 was marked for identification.)

13 Q The record will reflect the witness is reading  
14 the statement.

15 Are you through reading it?

16 A No. I was just going through it. I wasn't  
17 reading it.

18 Q Are you familiar with that statement?

19 A Yes, sir.

20 Q Is it correct and accurate?

21 A Yes, sir.

22 Q And you have signed it?

23 A Yes, sir.



1 Q And it was under oath?

2 A Yes, sir.

3 MR. WILSON: We will offer that as Number 3.

4 It will go in the record.

5 Q I have a question for you about this first  
6 incident that you brought up again about "suck my dick."

7 Who were the employees you were working with that  
8 day, the ones that you say, you know, were going to  
9 gather the students up in a line?

10 A Myself, Mr. Farley, and Mr. Miles, that I can  
11 recall.

12 Q And this was ACA paperwork; is that correct?  
13 I see ACA on the wall here. It was ACA paperwork?

14 A Yes.

15 Q And that paperwork had been handled by who?

16 A Ms. Moton.

17 Q And she had left?

18 A Yes, sir.

19 Q All right. Did Mr. Hardy do anything else to  
20 you other than ask you to go to a motel and have some  
21 drinks with him? Anything else that you can think of?

22 A In 2005?

23 Q In 2003, 2004, and 2005, other than what you

1 have testified to today. We have sort of been down  
2 through the whole slide.

3 A I hope I have given you all of the  
4 information.

5 Q Since that last reported incident that you  
6 said he asked you to go to a hotel, he hasn't had any  
7 contact with you, has he?

8 A That next day he told me I had lost my  
9 foundation there at DYS.

10 Q And that was sexual?

11 A That was threatening, sir. I took it to be.

12 Q This was before you reported all of this  
13 trying to get a transfer; right?

14 A Yes, sir.

15 Q Has he done anything since you reported this,  
16 to you?

17 A No, sir.

18 Q Haven't had any contact with him?

19 A No, sir.

20 Q You are aware he has lost his job?

21 A Yes, sir.

22 Q In fact, you testified against him at his  
23 hearing did you not, the termination hearing appeal?

1 A Yes. Mr. Perry asked me to testify.

2 Q The question is: You testified against him,  
3 didn't you?

4 A Yes, sir.

5 Q What do you want from Mr. Hardy?

6 A What do I want from Mr. Hardy?

7 Q Right. You have a lawsuit going against him.  
8 What do you want from him?

9 A Whatever the people of Montgomery County feel  
10 like I deserve.

11 Q This is not a TV quiz show now. What do you  
12 want from him?

13 A Whatever the people of Montgomery County think  
14 that I deserve.

15 Q What do you think you deserve?

16 A Whatever they feel like is appropriate.

17 Q So if they decide nothing is appropriate, that  
18 is what you would like to have?

19 A If they decide that is what is appropriate.

20 Q But you will not tell me what you want? Is  
21 that correct?

22 A There is nothing that he can give me that can  
23 restore what I have lost.

1 Q Well, do you want money from him? Is that  
2 what this is about?

3 A I have never asked for money.

4 Q So you don't want money?

5 A If the jury feels like that is what is  
6 appropriate.

7 Q So if the jury feels like him losing his job  
8 and being out of work and not being able to find a job  
9 and having his reputation totally ruined, which has  
10 happened, all of the above, then that would be fine with  
11 you?

12 A Mine has been ruined, too.

13 Q Yours has been ruined?

14 A Yes, sir.

15 Q Why?

16 A I have been called a whore, freak.

17 Q Mr. Hardy hasn't called you that, has he?

18 A Mr. Hardy started the whole thing.

19 Q Mr. Hardy has not called you those terms, has  
20 he?

21 A He has not called me that. He has made this  
22 possible.

23 Q You think he's still got this massive

1 influence out here amongst all of the employees? Is  
2 that what you are telling this deposition?

3 A I don't know what his level of control is.

4 Q The man has lost his job. He hasn't set foot  
5 out here in a year, maybe two years, maybe more. He is  
6 unemployed.

7 A He shouldn't have done what he did.

8 Q What kind of influence does he have?

9 A I don't know, but he shouldn't have done what  
10 he did. It was wrong.

11 Q Then why didn't you report it when it was  
12 going on?

13 A Because I was afraid, just like I am now. I  
14 need to keep my job.

15 Q Why didn't you stop it before it got out of  
16 control?

17 A I asked him to stop. I asked him to stop.

18 Q Why did you invite him into your house and  
19 serve him drinks and sit there and talk with him a year  
20 and a half after this supposedly started? Why did you  
21 let it go on and on?

22 A Because I didn't want him to be mad with me,  
23 sir.

1 Q Why did you invite him out to McDonald's and  
2 ask him for a transfer and lie about having another job?

3 A Sir, I would have told him anything to get  
4 away from him and his dorm.

5 Q It sounds like you -- I will withdraw that.  
6 Is there anything else you can think of that you  
7 want from Mr. Hardy, other than what the jury might  
8 decide will be appropriate, if anything?

9 A That's it, sir.

10 Q You cannot articulate what your damages are?  
11 And let me explain that. I mean, you can't tell me  
12 in your own words what your damages are, can you?

13 A My damages are mental and also physical.

14 Q Mental. How are they physical?

15 A Because the mental and physical are connected.

16 Q Anything else?

17 A No, sir.

18 MR. WILSON: Those are all the questions I  
19 have.

20 MR. JACOBS: Thank you, sir. I don't have  
21 any.

22 MR. PERRY: Thank you very much. This  
23 concludes the deposition.

TERA MCMILLIAN - 1/22/2008

310

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

END OF DEPOSITION

\* \* \* \* \*

FURTHER DEPONENT SAITH NOT

## 1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA

3 MONTGOMERY COUNTY

4 I, Kimberly B. Faucette, Certified Court  
5 Reporter and Notary Public for the State of Alabama at  
6 Large, do hereby certify that the foregoing  
7 transcript, pages 1 through 310, is a true and correct  
8 transcript of the testimony and proceedings taken at  
9 said times and place; and that the same was taken down by  
10 me in stenograph shorthand, and transcribed by me  
11 personally or under my personal supervision.

12 I further certify that I have no interest in  
13 this matter, financial or otherwise, or how it may  
14 develop or what its outcome may be. I further certify  
15 that I am not of counsel or litigants or associated with  
16 anyone connected with this cause to my knowledge.

17 Witness my hand this 3rd day of February,  
18 2008.

19

20

21 -----  
Certified Court Reporter and Notary

22 Public, State at Large

23 ACCR-309



**McMILLAN**

**V**

**DYS AND**

**HARDY**

**DEFENDANT'S**

**EXHIBIT 2**

**State of Alabama**  
**Department of Youth Services**  
**POLICY AND PROCEDURES**

**Related Standards:** 3-JCRF-1D-03, 1-JBC-1D-07

**Chapter:** Training and Staff Development

**Subject:** Training for New Employees

**Policy Number:** 4.2

**I. POLICY**

It is the Department of Youth Services policy that all new employees shall receive a minimum of 40 hours of training prior to being independently assigned to a particular job. Pre-Service training shall include, at a minimum, the following:

- historical perspective of agency/facility
- program/agency philosophy
- goals and objectives
- program rules and regulations
- use of discipline regulations
- legal responsibilities of staff
- juvenile rights and responsibilities
- juvenile rules and sanctions
- chain of command
- suicide precautions
- emergency procedures
- security procedures
- first aid, cardiopulmonary resuscitation
- report writing
- supervision of juveniles

**II. DEFINITIONS**

Not applicable.

**EXHIBIT**  
*Defendant*  
2

**Effective Date:** June 21, 2007 **Issued By:** *[Signature]* **Page** 1 **of** 2

**State of Alabama**  
**Department of Youth Services**  
**POLICY AND PROCEDURES**

**Related Standards:** 3-JCRF-1D-03, 1-JBC-1D-07  
**Chapter:** Training and Staff Development  
**Subject:** Training for New Employees  
**Policy Number:** 4.2

**III. PROCEDURES**

The administrator of each facility shall ensure that each employee receives a minimum of 40 hours training prior to being independently assigned to a particular job. The training should include, at a minimum, an orientation to the purpose, goals, policies, and procedures of the department and their particular facility, and an overview of the juvenile justice and correctional field. Additionally, the employee may receive job specific training for their particular job. Upon completion of the training, the employee shall sign or initial a statement of training received.

**IV. APPLICABILITY**

This policy applies to all Department of Youth Services personnel and facilities and to facilities and programs operated for DYS by contract providers.

**Effective Date:** June 21, 2007 **Issued By:**  **Page** 2 **of** 2

**TERA A. McMILLAN**

**v.**

**ALABAMA DEPARTMENT OF YOUTH SERVICES and  
MICHAEL J. HARDY**

**DEBRA SPANN**

**January 10, 2008**

**Reagan Reporters, LLC  
Phone: 334.262.7556  
Fax: 334.262.4437**

DEBRA SPANN - 1/10/2008

1

1 IN THE UNITED STATES DISTRICT COURT FOR  
2 THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION

4  
5 TERA A. McMILLAN,

6 Plaintiff,

7 vs. CASE NO.

8 2:07:CV-01-WKW

9 ALABAMA DEPARTMENT OF

10 YOUTH SERVICES and

11 MICHAEL J. HARDY,

12 Defendants.

13

14 \* \* \* \* \*

15 DEPOSITION OF DEBRA SPANN,

16 taken pursuant to notice and stipulation

17 on behalf of the Plaintiff, at the State

18 of Alabama Department of Youth Services,

19 Mt. Meigs campus, before Nicole Paulk,

20 Certified Court Reporter and Notary Public

21 in and for the State of Alabama at Large,

22 on January 10, 2008, commencing at

23 approximately 1:45 p.m.

1 APPEARANCES

2

3 FOR THE PLAINTIFF:

4 Jimmy Jacobs, Esquire

5 4137 Carmichael Road, Suite 100

6 Montgomery, Alabama 36106

7 FOR THE DEFENDANT ALABAMA DEPARTMENT OF

8 YOUTH SERVICES:

9 J. Dudley Perry, Jr., Esquire

10 Sancha Teele, Esquire

11 General Counsel

12 State of Alabama

13 Department of Youth Services

14 Post Office Box 66

15 Mt. Meigs, Alabama 36057

16 FOR THE DEFENDANT MICHAEL HARDY:

17 James Eldon Wilson, Esquire

18 Attorney at Law

19 4265 Lomac Street

20 Montgomery, Alabama 36106

21 ALSO PRESENT:

22 Jerry Love

23

1 STIPULATIONS

2 It is hereby stipulated and  
3 agreed by and between counsel representing  
4 the parties that the deposition of DEBRA  
5 SPANN is taken pursuant to notice and  
6 stipulation on behalf of the Plaintiff;  
7 that all formalities with respect to  
8 procedural requirements are waived; that  
9 said deposition may be taken before Nicole  
10 Paulk, Court Reporter and Notary Public in  
11 and for the State of Alabama at Large  
12 without the formality of a commission;  
13 that objections to questions, other than  
14 objections as to the form of the  
15 questions, need not be made at this time  
16 but may be reserved for a ruling at such  
17 time as the deposition may be offered in  
18 evidence or used for any other purpose as  
19 provided for by the Civil Rules of  
20 Procedure for the State of Alabama.

21 It is further stipulated and  
22 agreed by and between counsel representing  
23 the parties in this case that the filing

1 of the deposition of DEBRA SPANN is hereby  
2 waived and that said deposition may be  
3 introduced at the trial of this case or  
4 used in any other manner by either party  
5 hereto provided for by the Statute,  
6 regardless of the waiving of the filing of  
7 same.

8 It is further stipulated and  
9 agreed by and between the parties hereto  
10 and the witness that the signature of the  
11 witness to this deposition is hereby  
12 waived.

13 \* \* \* \* \*

14 I N D E X

15 Examination	Page
16 By Mr. Jacobs	6
17 Plaintiff's Exhibits	Page
18 1 - DYS Prohibition of Sexual	17
Harassment Policy	
19	
20 2 - DYS Sexual Conduct Policy	24
21	
22 3 - Ms. Spann's handwritten notes	40
on interview with Ms. McMillan	
23 4 - Ms. Spann's handwritten notes	48
on interview with Ms. Harris	



DEBRA SPANN - 1/10/2008

5

1	on interview with Ms. Williams	
2	6 - Ms. Spann's handwritten notes	51
3	on interview with Mr. Hardy	
4	7 - Ms. Spann's handwritten notes	55
5	on interview with Mr. Ellis	
6	8 - Ms. Spann's handwritten notes	57
7	on interview with Mr. Harvest	
8	9 - List of questions for Mr. Hardy	59
9	prepared by Ms. Spann	
10	10- Typed notes from Ms. Spann's	60
11	interview with Ms. McMillan	
12	11- Memo to Ms. Spann from Mr. Hardy,	62
13	dated 7/14/2005	
14	12- Memo to Whom It May Concern from	63
15	Paige Hall staff, dated 6/21/2005	
16	13- Memo to Whom It May Concern from	63
17	Mr. Harvest and Mr. Ellis, dated	
18	6/21/2005	
19	14- EEOC Charge of Discrimination	65
20	filed by Ms. McMillan, dated	
21	7/12/2005	
22	15- EEOC Charge of Discrimination	67
23	filed by Ms. McMillan, dated	
24	12/11/2005	
25	16- Memo to Ms. Spann from Mr. Hardy,	73
26	dated 1/18/2000	
27	17- Memo to Mr. Samuel from Mr. Hardy,	75
28	dated 1/18/2000	
29	* * * * *	
30	DEBRA SPANN, of lawful age,	

1 having first been duly sworn, testified as

2 follows:

3 EXAMINATION

4 BY MR. JACOBS:

5 Q. Would you state your name for the record  
6 for us?

7 A. Debra Spann.

8 Q. Okay. Ms. Spann, I'm Jimmy Jacobs, in  
9 case they didn't tell you that, and I  
10 represent Ms. McMillan. You know Ms.  
11 McMillan, don't you?

12 A. Yes.

13 Q. Tera? Okay. I have a few questions for  
14 you that are -- I was going to say  
15 primarily, but as far as I know are going  
16 to focus on Ms. McMillan's case and  
17 Mr. Hardy's actions and some of the  
18 information regarding sex discrimination  
19 and harassment and policies and procedures  
20 and so on here at DYS.

21 A. Yes.

22 Q. If I ask you a question that makes no  
23 sense, would you please let me know that?

1 I may ask you a question out of ignorance  
2 totally innocently. I'm not going to try  
3 to ask you any trick questions or anything  
4 of that nature, so if I ask you something  
5 that's not clear, would you tell me that  
6 and ask me to clarify it?

7 A. Yes, sir.

8 Q. Okay. I'm going to assume that you've  
9 given a deposition before; is that true?

10 A. Yes.

11 Q. Have you given more than five depositions,  
12 do you think?

13 A. Probably.

14 Q. Okay. So you're pretty familiar with this  
15 whole process and how it works?

16 A. Yes.

17 Q. What's your current address?

18 A. 4 West Rosemary Road.

19 Q. Okay. Is that --

20 A. In Montgomery.

21 Q. And what's your current position,  
22 employment?

23 A. I'm the personnel manager for the

1 Department of Youth Services.

2 Q. How long have you been in that position?

3 A. Since August of '98.

4 Q. All right. Where were you employed prior  
5 to August of '98?

6 A. I was with the State of Alabama Department  
7 of Rehabilitation Services.

8 Q. How long were you at Rehab?

9 A. From '93 until '98.

10 Q. All right. What was your position at  
11 Rehab Services?

12 A. I was their personnel manager.

13 Q. Were you at the State office on the  
14 by-pass?

15 A. Yes, sir.

16 Q. Was I there when you were there?

17 A. I'm not certain. I don't remember you,  
18 but that's not to say you weren't there.

19 Q. Okay. What office did you work in? This  
20 doesn't have anything to do with this  
21 case; I'm just curious. Did you work with  
22 -- what was her name, Ramona?

23 A. Lamona was there.

1 Q. Lamona, yes.

2 A. She was the director. And Jim Hare -- I  
3 took Jim Hare's place.

4 Q. Oh, okay.

5 A. He left, and then Lynn Ann Windsor --  
6 well, Palmer, Windsor -- was there.

7 Q. Okay. Yeah, I was there at that time. I  
8 was there when Jim retired. I think I  
9 went to his retirement party. Okay. I  
10 just didn't remember. I was with children  
11 services around '94 or '95, so we were all  
12 there together.

13 A. Okay. You were across the street.

14 Q. Oh, okay.

15 A. Uh-huh. You know, across the parking lot.  
16 That's what we called across the street.

17 Q. Okay. All right. That's right, I was.

18 A. Uh-huh.

19 Q. Okay. So you were personnel manager there  
20 from '93 to '98?

21 A. Right.

22 Q. Where were you employed prior to that?

23 A. I was with the Department of Revenue, the

1 State Department of Revenue. I was the  
2 personnel manager there. I was the  
3 assistant chief of personnel and training.

4 Q. Okay. And approximately how long were you  
5 for?

6 A. I was with revenue from '85 to '93. I was  
7 the assistant chief from '88 to '93.

8 Q. So you've been in business with the State  
9 for 33 years?

10 A. Oh, yes.

11 Q. Or more?

12 A. Yes.

13 Q. Are you going to retire?

14 A. I have thought about it, days like today.

15 Q. I'll talk with you when you get through.

16 You may be losing money coming to work.

17 But I know you're smart enough to figure

18 that out. Okay. Could you tell me

19 generally what your duties are in the job

20 here as personnel manager?

21 A. Well, I'm over all -- essentially, all  
22 personnel functions for the department, to  
23 include hiring, separations for the

1 department, maintenance of personnel  
2 files, benefits. You know, it is hard  
3 when people ask you what you do, but those  
4 types of things. Any kind of human  
5 resource function typically falls under  
6 me, those types of actions. I also have  
7 done, of course, sexual harassment  
8 investigations. Pretty much all  
9 disciplinary types of actions would at  
10 least flow through me because I do  
11 separations of employees.

12 Q. Understanding that there might be some  
13 variation from business to business and so  
14 on, would you generally do the same thing  
15 as a director of human resources in some  
16 businesses?

17 A. Yes.

18 Q. Okay. It's an equivalent kind of job?

19 A. Yes.

20 Q. Okay. Who do you report to in that job?

21 A. Allen Peaton. He's our deputy director  
22 for administration.

23 Q. Okay. And then -- and I'm going to assume

1 you would know, but he would report to

2 Mr. Wood?

3 A. Yes.

4 Q. Okay. Are there any departments -- and if

5 I'm not using the right word -- I don't

6 know if it would be divisions or

7 departments or offices -- that report

8 directly to you at DYS?

9 A. No.

10 Q. Okay. Do you supervise other employees?

11 A. Yes.

12 Q. Approximately how many?

13 A. Two.

14 Q. Two, okay. Are they both administrative,

15 clerical type persons?

16 A. Yes.

17 Q. In your employment with Rehab Services

18 before you came here, did you have any

19 responsibility for doing investigations of

20 complaints or claims of discrimination?

21 A. Yes.

22 Q. Did you have that throughout the time you

23 were at Rehab?



1 A. Yes.

2 Q. How about when you were with Revenue?

3 A. No.

4 Q. You didn't have that responsibility there?

5 All right. That was in '93. What is your

6 educational background, Ms. Spann?

7 A. I have a bachelor's in psychology and a

8 master's in criminal justice.

9 Q. In criminal --

10 A. Justice.

11 Q. -- justice? Okay. Have you had any

12 non-degreed training in personnel

13 management or anything of that sort?

14 A. No.

15 Q. When did you get your bachelor's in

16 psychology?

17 A. '76.

18 Q. And your master's in criminal justice?

19 A. '77. Now, let me -- may I clarify

20 something?

21 Q. Sure.

22 A. I do attend ongoing training that is

23 offered and what is offered by the State

1 personnel department. I haven't -- just  
2 not gone to school since then.

3 Q. All right. I was going to ask you that  
4 and sort of I guess in my mind it was a  
5 two-stage thing, like I was wondering if  
6 you had gone and pursued some coursework  
7 in human resources that just wasn't a  
8 degree program, and I think the answer to  
9 that is no?

10 A. Right.

11 Q. Okay. Then your training in personnel  
12 management has been -- and this, again, is  
13 not a trick question, but would it be fair  
14 to say that it has been primarily on the  
15 job?

16 A. That's correct.

17 Q. And that's been primarily through the  
18 State Personnel Department?

19 A. Yes.

20 Q. All right. What specific training have  
21 you had on discrimination issues in  
22 employment?

23 A. I have been to several of the EEO

1 seminars. They do conduct seminars on a  
2 yearly basis.

3 Q. Okay. And I don't want to interrupt you,  
4 but who conducts?

5 A. The EEOC.

6 Q. Okay.

7 A. I have been to several of those. And  
8 State Personnel does put on some seminars,  
9 and I have been to those. And they do put  
10 on, of course, sexual harassment seminars,  
11 and I've been to those. I do try to stay  
12 abreast of those. We also have a  
13 personnel manager's counsel where we meet  
14 on a monthly basis. And we have speakers  
15 that come, and they try to keep us up on  
16 what's going on in the marketplace arena,  
17 what have you, and I do attend those, so I  
18 do try to stay current.

19 Q. Is that counsel part of State government?

20 A. Yes. It's State personnel managers and  
21 Ms. Graham attends and updates us and,  
22 Alice Ann Byrne, their general counsel,  
23 comes and usually presents those or Sandy

1 Speakman presents, so we usually have a  
2 legal update.

3 Q. And you have those at least --

4 A. We meet every month.

5 Q. Oh, you meet every month for those?

6 A. Yes, sir.

7 Q. Would it be -- would there be a component  
8 of that that dealt with sexual harassment  
9 every month, or is that --

10 A. If it's necessary, but not --

11 Q. No? It's just whatever -- I'll use the  
12 term the "hot topic" is?

13 A. Exactly.

14 Q. Okay. The EEO conferences that you've  
15 gone to, the EEOC sponsored conferences  
16 that you've attended -- and I may just not  
17 be remembering it right, but did you say  
18 those were on an annual basis?

19 A. They have them on an annual basis. I do  
20 not go on an annual basis, but they do  
21 have them.

22 Q. Do you recall the last one of those you  
23 attended?

1 A. No, sir, I don't, but it's been several  
2 years.

3 Q. Okay. Do you think it was before this  
4 incident with Mr. Hardy arose?

5 A. Yes.

6 Q. Did you ever run into an attorney up there  
7 named Chuck Guerrier?

8 A. I don't remember.

9 Q. You don't remember? Okay. If you had,  
10 you would remember. He was the regional  
11 attorney at one time. So it would be fair  
12 to say that you -- the last EEOC-sponsored  
13 training that you went to was sometime  
14 prior to 2005?

15 A. Yes, sir.

16 Q. Okay. Let me show you what we'll mark as  
17 Plaintiff's Exhibit 1. I know you're  
18 familiar with this policy.

19 (The referred-to document was  
20 marked for identification  
21 as Plaintiff's Exhibit No.  
22 1.)

23 A. Yes, sir.

1 Q. And actually, I believe I put two policies  
2 together here, the first two pages and  
3 then the third page.

4 A. All right.

5 Q. Is this the policy of DYS?

6 A. Yes, sir.

7 Q. What responsibility do you have for this  
8 policy?

9 A. Typically, when I get a sexual harassment  
10 complaint, I will ask or submit the  
11 complaint to the director and ask him does  
12 he want me to investigate -- I will tell  
13 him that I have gotten a complaint; does  
14 he want me to investigate or does he want  
15 to assign the complaint to someone else,  
16 and he will make a decision as to who he  
17 wants to investigate. And at that point,  
18 whoever he decides he wants to investigate  
19 will investigate. If it's me, I proceed,  
20 or if he wants someone else, then I will  
21 hand off the information I have to whoever  
22 he assigns it to.

23 Q. Are all complaints of sexual harassment

1 directed to you?

2 A. I'm not going to say all of them because I  
3 don't know that all of them are.

4 Q. Okay. As I read the policy, it says a  
5 complaint should be made to the  
6 departmental personnel manager, and that's  
7 you. According to the policy, should all  
8 complaints be made to you?

9 A. According to the policy, yes.

10 Q. Okay. And I understand that that may not  
11 always be the case; is that correct?

12 A. That is correct.

13 Q. Okay. What specific training have you had  
14 to conduct an investigation of a sexual  
15 harassment or sex discrimination claim?

16 A. I have basically had on-the-job training  
17 more so than anything else. When I was at  
18 Rehab, they told me, you have to go do  
19 this investigation. So my friend had been  
20 in the military and that was all she had  
21 done was investigations, Title 7 sexual  
22 harassment. And she worked for another  
23 State department and that's what she did,

1 so she trained me on how to do that. And  
2 then I went and started doing them at  
3 Rehab because I basically got -- and I'm  
4 -- but this is the truth -- I got thrown  
5 into it. But I felt like I had a good  
6 background because she gave me materials  
7 on how to do it and she trained me very  
8 well on how to do it.

9 Q. Okay. I don't think I will have any  
10 follow-up to this, but could you tell me  
11 who that was?

12 A. Maxine Wheeler.

13 Q. Okay. And I will ask you again about her  
14 later. Did you get any other training  
15 after that?

16 A. Yes, I did. Before I did the first one,  
17 that's how I learned.

18 Q. That's how you did it?

19 A. Uh-huh. Then after that I did attend a  
20 seminar on how to do it, and it was what  
21 she had taught me to do, only she had  
22 really taught me in more detail and in  
23 depth.



1 Q. That was my question -- my next question  
2 was going to be did they teach you  
3 anything different when you went to a  
4 seminar than Ms. Wheeler had taught you?

5 A. No.

6 Q. Okay. And the process that she taught  
7 you, is that what you still utilize?

8 A. Yes.

9 Q. Okay. Who besides you at DYS would  
10 conduct an investigation of sexual  
11 harassment or discrimination?

12 A. We have an investigation section, and our  
13 special investigator would do these if  
14 need be.

15 Q. Would that be Mr. Staton (phonetic)?

16 A. Yes.

17 Q. Is there anyone else other than Mr. Staton  
18 that you know of that would do an  
19 investigation?

20 A. I don't know.

21 Q. Is he the only other person other than you  
22 that you're aware of that's ever done an  
23 investigation?

1 A. Of sexual harassment?

2 Q. Yes.

3 A. Yes.

4 Q. Okay. Do you know what training  
5 Mr. Staton has?

6 A. No.

7 Q. The third page of this exhibit that I gave  
8 you has a different policy number, 3.24.

9 What is this policy for?

10 A. As it states, the subject is sexual  
11 conduct, and it just states that sexual  
12 conduct between staff and/or students --

13 Q. -- is prohibited?

14 A. Right.

15 Q. If there were allegations of sexual  
16 conduct between staff and/or students or  
17 volunteers or contract personnel, would  
18 that be reported to you?

19 A. Not if it was with students. Typically I  
20 don't handle anything with students.

21 Q. Okay. If it involves staff, would that  
22 come to your attention?

23 A. Between staff? If it is on the grounds,

1 yes, usually.

2 Q. Do you have responsibility for maintaining  
3 personnel files?

4 A. Yes.

5 Q. If a person violates a policy and is  
6 disciplined, is that placed in that  
7 personnel file?

8 A. Yes.

9 Q. And would that come to you to be placed in  
10 their personnel file?

11 A. Yes.

12 Q. Okay. If someone were to violate this  
13 policy, that should ultimately end up in  
14 your office; is that correct?

15 MR. PERRY: Which policy are you  
16 talking about?

17 MR. JACOBS: 3.24.

18 MR. PERRY: 3.24?

19 MR. JACOBS: Yeah. We can make  
20 that a separate exhibit.

21 It's the third page.

22 THE WITNESS: Between staff.

23 MR. PERRY: Between staff and/or

1 students, volunteered or  
2 contract personnel and  
3 students.

4 MR. JACOBS: If you'll hand that  
5 one back, I'll put a sticker  
6 on it. We'll mark that last  
7 page as Plaintiff's Exhibit  
8 2.

9 (The referred-to document was  
10 marked for identification  
11 as Plaintiff's Exhibit No.  
12 2.)

13 A. Could you repeat the question?

14 Q. I will attempt to. We may have to call on  
15 the court reporter. I wish I were smart  
16 enough to remember all the questions I  
17 ask.

18 THE REPORTER: Do you want me to  
19 --

20 MR. JACOBS: I'm going to try it,  
21 and if I'm really off, if  
22 you'd let me know -- or  
23 maybe you would let me know.

1 Q. I think the last question I asked you was  
2 if this policy was violated and there was  
3 some action or discipline to go into the  
4 personnel file, that ultimately would come  
5 to you, wouldn't it, to go into the file?

6 A. If discipline were taken, it should go  
7 into the personnel file.

8 Q. Okay. Well, let me give you a  
9 hypothetical, if I could. Let's suppose  
10 that -- I don't know the names of all the  
11 buildings here, but let's suppose that two  
12 staff members in one of these buildings  
13 back here behind us were involved in some  
14 sexual conduct that would be in violation  
15 of this policy and that was reported in  
16 some fashion -- the manager became aware  
17 of it or perhaps somebody external brought  
18 it to somebody's attention -- would there  
19 be any written record made of that?

20 MR. PERRY: Object to the form of  
21 the question.

22 A. If there were disciplinary action taken,  
23 it would go in the file.

1 Q. Okay. If an employee violated a policy,  
2 what action is supposed to occur?

3 MR. PERRY: Object to the form of  
4 the question.

5 A. If disciplinary action were taken, it  
6 would go in the folder.

7 Q. Are managers trained on the policies to  
8 your knowledge?

9 A. Yes.

10 Q. Are managers charged with enforcing the  
11 policies?

12 A. Yes.

13 Q. All right. If a manager has knowledge  
14 that a policy has been violated, should  
15 there be a record made of that?

16 A. Could you repeat that again?

17 Q. If a manager has knowledge that a policy  
18 has been violated, should there be a  
19 record made of that?

20 MR. PERRY: Object to the form of  
21 the question.

22 A. Well --

23 Q. Let me rephrase it. What's a manager

1 supposed to do if they become aware that  
2 an employee has violated a policy?

3 MR. PERRY: Objection to the form  
4 of the question.

5 A. Managers are charged with enforcing the  
6 policies and procedures.

7 Q. Okay. And I understand from what you told  
8 me previously that if there were any  
9 disciplinary action taken because a policy  
10 was violated -- or a procedure -- then  
11 that would come to your office. Is there  
12 a -- I don't know the word to use, so I'll  
13 say a practice where a manager could have  
14 awareness that a policy was violated but  
15 they wouldn't impose any discipline?

16 A. I don't know.

17 Q. Okay. That's fair enough. I notice under  
18 Roman Numeral 3, procedures, on this  
19 policy, it says that each facility will  
20 maintain written policies to ensure  
21 adherence to this policy --

22 MR. WILSON: Excuse me. Is that  
23 Exhibit 1 or 2 you're

1 referring to?

2 MR. JACOBS: That's Exhibit 2,

3 Roman Numeral 3.

4 Q. Do you have any involvement in developing

5 or implementing those policies at the

6 facility level.

7 A. No.

8 Q. Do you have any awareness as to whether

9 the various facilities have such policies

10 or not --

11 A. No.

12 Q. -- or procedures. I'm sorry, not

13 policies, but procedures?

14 A. No.

15 Q. Do you have anyone to assist you when you

16 do an investigation of a sexual

17 discrimination or harassment complaint?

18 A. No.

19 Q. On Exhibit 1, the prohibition of sexual

20 harassment, does DYS have any -- well, how

21 does DYS implement this policy?

22 A. How do they implement it?

23 Q. Yes?



1 A. We have training, what they call mandatory  
2 training. They have Mandatory Part A and  
3 Mandatory Part B. Now, please know I'm  
4 not involved in this training, but it is  
5 my understanding that this is included in  
6 that training. In addition, this is also  
7 covered in our pre-service training, which  
8 all new staff go to. And this Mandatory  
9 Part A and B, staff go to that once a year  
10 also. So this is covered in the  
11 pre-service and also once a year, so staff  
12 get that at least once a year.

13 Q. Okay. Is there a formal presentation of  
14 any kind in the pre-service training?

15 A. It's my understanding that there is. Now,  
16 there again, I don't do it personally, but  
17 it's my understanding that there is.

18 Q. Do you know who is responsible for doing  
19 the training on the sexual harassment  
20 policy?

21 A. They have -- the orientation and training  
22 section does that, and whichever trainer  
23 is assigned to do it.

1 Q. Within the organization of DYS, where is  
2 the organization and training section  
3 located -- and I don't mean physically,  
4 but in the organization?

5 A. It's located in the administration  
6 section.

7 Q. Okay. Do you know who that individual or  
8 those individuals would report to?

9 A. They would report to Mr. Peaton.

10 Q. Okay. Do you know the name of any of the  
11 individual or individuals who conducts  
12 that training?

13 A. Aaron Chambers is over the section.

14 Q. Is there more than one person in the  
15 section? You say he's over it.

16 A. Yes.

17 Q. Do you know what training any of those  
18 individuals have in prohibition of sexual  
19 harassment?

20 A. No, sir, I don't.

21 Q. Have they ever sought your advice or input  
22 into the training that they provide to  
23 staff?

1 A. No.

2 Q. Do you know if there is any requirement  
3 that staff, either new staff or continuing  
4 staff, acknowledge that they have been  
5 trained on the sexual harassment policy?

6 A. I don't know.

7 Q. The reason I ask is oftentimes I see a  
8 form where people are required to sign.

9 A. Right.

10 Q. I haven't seen that in any of the files  
11 I've looked at here. You don't require  
12 that as part of the personnel file?

13 A. No.

14 Q. Okay. As personnel manager, do you have  
15 any way of verifying that an individual  
16 actually has been trained on sexual  
17 harassment?

18 A. No.

19 Q. Is there any separate training that is  
20 given to supervisors on sexual harassment  
21 that's different from that that's given to  
22 regular staff?

23 A. I think so. I think State Personnel

1 provides different training to supervisors  
2 than it does to regular staff.

3 Q. Okay. Do you know if any record is  
4 maintained of that training?

5 A. State Personnel keeps a record of it, but  
6 I don't -- I don't know if our training  
7 section keeps a record or not.

8 Q. Is there any provision to make a record  
9 that training has been done in the  
10 individual staff member's personnel file?

11 A. The campuses all have training  
12 coordinators, and they keep records.

13 Q. Okay. So, for example, we're here at Mt.  
14 Meigs. There would be records here of the  
15 training that had been done in not just  
16 sexual harassment, but you think any  
17 training?

18 A. They tell me there is.

19 Q. Okay. So it's your understanding that  
20 staff, DYS staff, as opposed to management  
21 people, are trained by the -- and I'm  
22 sorry, I've forgotten the name, but  
23 Mr. Chambers' group --

1 A. Uh-huh.

2 Q. -- and then the supervisors, the  
3 management staff, are trained by personnel  
4 from the State Personnel Department?

5 A. Well, everyone can go to State Personnel,  
6 but their focus is different. They have  
7 different focuses.

8 Q. Well, this may clarify it. I'm  
9 understanding that everybody -- I'm sorry.  
10 My understanding is that all staff people,  
11 non-management people, would receive  
12 training at pre-service and on an annual  
13 basis on sexual harassment from within  
14 DYS --

15 A. Right.

16 Q. -- from DYS staff. And then I was  
17 understanding that supervisory staff,  
18 persons who had responsibility for other  
19 staff, would get some additional training?

20 A. That's correct.

21 Q. All right.

22 A. But if we need regular, quote/unquote  
23 staff, they can also go to the State

1 Personnel.

2 Q. Okay. But that's an optional thing?

3 A. Yes.

4 Q. I guess somebody would make a decision  
5 that they needed it?

6 A. Exactly.

7 Q. Okay. How often does that State Personnel  
8 training for supervisors occur?

9 A. They have training every quarter, and I'm  
10 not certain of their schedule, but I do  
11 know it is offered every quarter.

12 Q. Is sexual harassment a part of that  
13 training every quarter?

14 A. Yes.

15 Q. It is, okay. Who within the Department of  
16 Youth Services has responsibility for  
17 implementing this policy on the  
18 prohibition of sexual harassment?

19 A. I'm not sure I understand the question.

20 Q. Okay. And I'll try to explain it. I'll  
21 have to lay a little groundwork, I guess,  
22 but -- and I won't say this happens all  
23 the time, but if you have an organization

1 and there's something that's supposed to  
2 get done, if that responsibility generally  
3 gets assigned to somebody to see that it  
4 gets done and they're accountable for  
5 it -- so what I'm asking is who in the  
6 Department of Youth Services would have  
7 the responsibility for seeing that the  
8 prohibition of sexual harassment policy is  
9 implemented?

10 MR. PERRY: Objection to the form  
11 of the question.

12 A. Well, I don't know.

13 Q. Okay. Describe for me, if you would, the  
14 procedure that you use when -- I  
15 understand a complaint is made and it  
16 comes to you and then you send that to  
17 Mr. Wood?

18 A. Right.

19 Q. And Mr. Wood may designate either you or  
20 Mr. Staton to investigate. Assume that he  
21 says Ms. Spann, I want you to investigate  
22 this. Describe for me the procedure that  
23 you would use to do that.

1 A. Typically, I will interview the person who  
2 made the complaint, and if they have any  
3 witnesses they want me to interview, I'll  
4 interview the witnesses. I'll interview  
5 the person they've made the complaint  
6 against and then any witnesses that they  
7 want me to interview. And if I haven't  
8 been able to catch up with the people on  
9 either side, I'll try and tie up any loose  
10 ends. I do try to do all of this -- I try  
11 to get this taken care of -- I literally  
12 will drop what I'm doing and get started  
13 on it right away as soon as I get the  
14 complaint and the assignment, and I try to  
15 get it done in just a few days and catch  
16 up with all the witnesses and try to get  
17 it out of the way. I might -- after I've  
18 interviewed everybody, I do like to, you  
19 know, look over everything and leave it  
20 for a day or two to kind of think on it  
21 and then try to make sure I'm making an  
22 appropriate conclusion and then forward my  
23 recommendation to Mr. Wood for his



1 decision as to what he feels is

2 appropriate to do.

3 Q. All right. So you've interviewed the  
4 complainant, the person who's making the  
5 complaint. Do you take notes during the  
6 course of that meeting with them?

7 A. Yes.

8 Q. Do you keep those notes?

9 A. Yes.

10 Q. Okay. Do you -- and I have some we're  
11 going to look at, but do you -- I don't  
12 know the word I want to use --  
13 reconstitute -- do you redo those notes at  
14 a later time?

15 A. Yes. Usually I just kind of briefly do an  
16 outline while they're talking, and then  
17 when they leave, I try to flesh them out  
18 on my computer or whatever --

19 Q. And type it up?

20 A. Yes. And then I'll interview somebody  
21 else or whatever.

22 Q. Okay. Are there any sort of guidelines  
23 that you use to conduct your

1 investigation?

2 A. I basically go by the complaint, what  
3 their complaint was, do the who, what,  
4 when, where, why, and how. And that's  
5 pretty much common sense. I try to stick  
6 to the facts. I don't try to get into a  
7 lot of other issues. I try to stay away  
8 from he said she said. I like to do the  
9 what happened here, what was the incident,  
10 and, you know, why do you think that this  
11 happened, what -- you know, what  
12 precipitated it and what did you do, how  
13 did that make you feel, whatever. That's  
14 it. I don't try to get into this other  
15 stuff, just -- just the facts. So -- I  
16 don't -- I don't like all that other  
17 stuff.

18 Q. Are you aware of the EEOC's guidance for  
19 conducting investigations of sexual  
20 harassment?

21 A. Yes.

22 Q. Do you follow those guidelines?

23 A. I haven't looked at them in so long, I

1 really don't remember.

2 Q. Do you keep records of all of the  
3 complaints that are made in DYS?

4 A. Yes.

5 Q. All right. Are those located in your  
6 office?

7 A. Yes.

8 Q. And I think perhaps a little earlier we  
9 established that you have a record of all  
10 of the complaints that have been sent to  
11 you, but there may be some that were never  
12 sent to you. Is that --

13 A. That's correct.

14 Q. Okay. During the -- I think it's almost,  
15 what, nine years that you've worked with  
16 DYS?

17 A. Uh-huh.

18 Q. Have you ever become aware of an incident  
19 or a complaint of sexual harassment that  
20 had not been brought to you, that you  
21 learned about later?

22 A. Yes.

23 Q. Okay. And would that have been an

1 incident that some other DYS management  
2 staff would have been aware of and handled  
3 on their own?

4 A. Yes.

5 Q. Okay. I think we'll look at the notes.  
6 Let me show you what I've marked as  
7 Plaintiff's Exhibit 3. And that is a  
8 document that I received that I believe  
9 was an exhibit -- and you don't have to  
10 know this or not know it, and I may be  
11 wrong, but I believe it was an exhibit  
12 that Mr. Hardy used in one of his hearings  
13 and that's why it has that down at the  
14 bottom. Is this a copy of some notes that  
15 you made?

16 (The referred-to document was  
17 marked for identification  
18 as Plaintiff's Exhibit No.  
19 3.)

20 A. Yes.

21 Q. I'm going to assume that you're trained in  
22 shorthand since I can't read some of this.  
23 I would like to ask you, first of all, at

1 the top -- the copy I had is cut off a  
2 little bit. But I have dash 14, dash 05,  
3 sexual harassment. Is that the date that  
4 you --

5 A. Yes.

6 Q. -- believe you took this?

7 A. Yes, it was June 14.

8 Q. Got it. I'm not sure how important it is,  
9 but there's just some question about when  
10 Ms. McMillan came to see you. And you'll  
11 see that in a minute, why part of that  
12 confusion exists. But on that day you  
13 wrote down 6-14-05?

14 A. Right.

15 Q. Okay. The third line there has some wavy  
16 lines in it, and I think I probably know  
17 what that says, but could you tell us what  
18 it says when it says "wants"?

19 A. Wants to go to another dorm.

20 Q. And beneath that?

21 A. Is in Paige Hall.

22 Q. Okay. The next line just has one little  
23 mark in it between sexual --

1 A. Sexual advances for two years.

2 Q. Okay. And then the next line?

3 A. Told her he wanted her to suck his dick

4 while the kids went to the dining hall.

5 Should be finished when the kids come

6 back.

7 Q. Okay. The next line?

8 A. Came behind the desk and grabbed her

9 breasts.

10 Q. Okay. The next line? Asked her friend --

11 A. -- how much money to get her.

12 Q. Okay. The next line? Talked with her --

13 A. -- about the website, black P.

14 Q. And I assume the parentheses explains what

15 that is?

16 A. Yeah.

17 Q. Okay. The next line starts, Hardy knew --

18 is that where her house was?

19 A. Yeah.

20 Q. What's the symbol in there?

21 A. He came to talk about her career.

22 Q. Okay.

23 A. This was after Christmas. When she told

1 him she lived in Spring Valley and she was  
2 going to tell him how to get there, he  
3 said he knew where she lived. By the time  
4 they hung up the phone, he was in her  
5 driveway.

6 Q. Okay.

7 A. Her friend was there. They had drinks and  
8 talked. He pulled his t-shirt over his  
9 head.

10 Q. Okay. The next line, put her --

11 A. On the 12 to 8 shift and three others  
12 wanted it. Bowling had a transfer.

13 Q. I'm sorry, I didn't understand. Bowling?

14 A. Bowling. That's the name of a unit  
15 manager in another dorm.

16 Q. Had a transfer?

17 A. Uh-huh.

18 Q. Oh, okay. And is that related to him  
19 putting her on the 12 to 8 shift?

20 A. Uh-huh.

21 Q. Okay. Hardy told her it would --

22 A. It will take her two years to transfer out  
23 of his dorm. The only reason Chriske got

1 out was because he was white.

2 Q. I don't think there's any shorthand in the  
3 next two lines. Beginning with Ingria  
4 Williams --

5 A. She's not interested in men and Dortch  
6 sexually harassed her until he figured it  
7 out. And she bought \$300 worth of  
8 merchandise from him, meaning Hardy.

9 Q. And that reference to bought the  
10 merchandise, is that reference to Ingria  
11 Williams or to Tera McMillan?

12 A. Ingria Williams.

13 Q. Okay. The next two lines don't appear to  
14 have any shorthand.

15 A. Right.

16 Q. Then there appears to be just an isolated  
17 reference to Greta Johnson and Carl  
18 Gadson.

19 A. Right.

20 Q. The writing below that, does that go with  
21 Greta Johnson and Carl Gadson, or is that  
22 separate?

23 A. No, that's separate.



1 Q. Okay. Could you fill in the blanks for  
2 me, then, where it says, said would give  
3 her --

4 A. He said he would give her a monthly salary  
5 if she would be his side woman, and mom  
6 heard him ask -- ask her to meet -- well,  
7 ask him to meet her at a hotel. And then  
8 --

9 Q. Next line?

10 A. She has heard he tried to go with --  
11 should be Bernice Howard and Mary Moten,  
12 who are former employees. And then Eugene  
13 Smith got moved because of a rumor about  
14 Mr. Hardy. Nobody believed it, but it was  
15 true. Mr. Hardy told her himself it was  
16 true.

17 Q. And I think there's a little bit on the  
18 next page. No, this is a separate  
19 interview. Okay. Are those the notes  
20 that you took in your initial meeting with  
21 Ms. McMillan?

22 A. Yes.

23 Q. What did you do after you met with her?

1 A. I asked Mr. Wood did he want me to do an  
2 investigation or did he want to assign it  
3 to anybody else, and he told me to do it.

4 Q. And how did Ms. McMillan come to you?

5 A. She had been on campus to see Ms. Rankins,  
6 a specialist down there, and Ms. Rankins  
7 told her to come and see me.

8 Q. Okay. Do you remember when Ms. McMillan  
9 came to see you? I realize it was, what,  
10 two years ago now?

11 A. Uh-huh.

12 Q. When she came to see you, was she angry?

13 MR. PERRY: Objection to the form  
14 of the question.

15 A. I don't remember if she was angry.

16 Q. Was there anything about her emotional  
17 condition or state that stuck in your mind  
18 that you remember today?

19 A. No.

20 Q. Okay. Do you remember approximately how  
21 long this interview with her took?

22 A. It took a -- it took a while.

23 Q. Do you think more than an hour?

1 A. Yes.

2 Q. More than half a day?

3 A. No, no, no. But longer than an hour.

4 Q. Okay. After Mr. Wood told you that he  
5 wanted you to do the investigation, what  
6 was the next thing that you did?

7 A. Well, I tried to arrange interviews with  
8 the people that she had mentioned that she  
9 felt like may be good to talk with, Ms. --  
10 she had told me her friend that was there  
11 when Mr. Hardy came to her house. She had  
12 told me the lady's name, Ms. Veronica  
13 Harris, so I tried to get in contact with  
14 her. I tried to get Ms. Ingria Williams,  
15 and I tried to contact Ms. Bernice Howard  
16 and Mary Moten to talk with them to see if  
17 they could provide any information. And I  
18 did talk with Ms. Veronica Harris, and she  
19 was the one that said that Mr. Hardy said  
20 that he asked her what would it take to  
21 get her or how much money would it take to  
22 get her, and she said -- I'm sure you  
23 probably have it; I've got it in my notes.

1 He said, you know, you probably just --  
2 it's in my notes.

3 Q. Let's go ahead and mark that and get you  
4 to look at that. There's no sense in  
5 trying to get you to do that blind when  
6 we've got your notes.

7 A. And it has been a while.

8 Q. Right, and I understand that. Here's  
9 Exhibit 4.

10 (The referred-to document was  
11 marked for identification  
12 as Plaintiff's Exhibit No.  
13 4.)

14 A. Right. How much would it take for her,  
15 Mr. Hardy asked her. And she said -- she  
16 said, I really do not know, Mr. Hardy; if  
17 you are trying to date her, then I think I  
18 know pretty well -- he did not give her a  
19 response and just said hmmm -- on campus,  
20 and it's been a while now. Ms. Moten was  
21 still here when that happened. McMillan  
22 called right after Ms. Harris left and  
23 said the lady was afraid for her job and

1 she just told her to tell the truth.

2 Q. Was she referring to Ms. Harris?

3 A. Yes.

4 Q. Do you have any difficulty in doing these  
5 investigations because people are afraid  
6 to talk?

7 A. It is very difficult when the people still  
8 work here, because our staff do have  
9 control over the schedules and  
10 disciplinary actions and evaluations, so  
11 it doesn't seem like much to an outside  
12 person looking in, but it's these people's  
13 livelihoods. And particularly for the  
14 females, it's -- it's very difficult for  
15 them to come forward and also to testify  
16 against some of the others or for some of  
17 the others.

18 Q. On Plaintiff's Exhibit 4 there, Veronica  
19 Harris -- I see 6/23 at the top. Is that  
20 the date that you talked with her?

21 A. Yes.

22 Q. 6/23 of '05, I believe it would have been?

23 A. Uh-huh.

1 Q. What is the reference to Ms. Moten there?

2 A. Because I asked her when that was, and she  
3 said it was when Moten was still here.

4 Q. When Hardy approached her about how much  
5 it would take?

6 A. Uh-huh.

7 Q. Okay. I didn't understand that. Let's go  
8 ahead and mark Plaintiff's Exhibit 5. And  
9 this one has Ingria Williams at the top.

10 (The referred-to document was  
11 marked for identification  
12 as Plaintiff's Exhibit No.  
13 5.)

14 A. Okay.

15 Q. And this one is dated 6/22.

16 A. Okay. And Ms. Williams said that  
17 Mr. Hardy would help McMillan with her car  
18 if she would -- I've got if she would be  
19 with her -- if she would be with him. And  
20 she meant McMillan and Hardy. And she  
21 said that McMillan told her that at her  
22 house, meaning McMillan, he took his shirt  
23 off and he fondled his nipples. And she

1 said that when she, meaning Ms. Williams,  
2 was on probation, Dortch used to harass  
3 her a lot. She said Dortch was real  
4 messy, but she said he stopped all that.

5 Q. What did you understand the reference to  
6 "messy" to be? Was that talking about  
7 harassing her messy or --

8 A. No, he's -- he's real -- he likes to start  
9 stuff and keep something stirred up all  
10 the time, and Ms. Williams is not that  
11 way. And so he found out she's not that  
12 way, and so he just left her alone. And I  
13 asked her did she ever -- did she know  
14 that Mr. Hardy allegedly sold merchandise  
15 and did he ever ask her -- or did she know  
16 that, and she said yeah. And she bought  
17 about \$300 worth of sweat suits and  
18 purses, and she felt like she kind of had  
19 to, but she had never done it since then.

20 Q. Okay. Would that have been a violation of  
21 any policy that you're aware of?

22 A. I don't know.

23 Q. Okay. The next one I have has got Michael

1 Hardy at the top. I think the first line  
2 says unit manager at Paige Hall  
3 approximately ten years?

4 (The referred-to document was  
5 marked for identification  
6 as Defendant's Exhibit No.  
7 6.)

8 A. Ten years, uh-huh, right. And Ms.  
9 McMillan has worked for him about two  
10 years. He was over at Holloway for a  
11 while and then he went back to Paige Hall,  
12 and she went with him at the same time  
13 that he went back to Paige Hall.

14 Q. Okay. This line that has -- looks like Z  
15 one else?

16 A. No one else has talked to her about this.  
17 He did not tell anyone to or no one else  
18 had talked to her about it. In May of  
19 '05, she asked to come in early, said she  
20 had a second job and -- you know, this has  
21 gotten cold -- something to do with FMLA.  
22 But anyway, she had talked with  
23 Mr. Bowling a couple of months about a



1 transfer, and --

2 Q. Okay. What's this down here about two  
3 years?

4 A. He did not tell her it would take two  
5 years to transfer; he told her there was a  
6 waiting list for transfer. And he doesn't  
7 have any idea why she made the statement  
8 about Chriske. He thinks this has to do  
9 with the transfer to a particular dorm,  
10 ITU, which is where Bowling was at that  
11 time, with a particular shift of 10 to 6.  
12 Now, as far as the Eugene Smith  
13 falsification and his -- the rumors and  
14 all that, apparently there was some  
15 letters of falsification and Hardy did not  
16 support him and that's what the issue is,  
17 but Hardy says that it is not true. And  
18 as far as Ms. Moten and Ms. Howard, no, he  
19 emphatically denied that. He had no  
20 relationship with them. And as far as  
21 falsifying the books, he said no to  
22 falsifying the books or phone logs. He  
23 may have had -- Ms. McMillan may have had

1 the book, the Chemical Book, for a couple  
2 of days after she left or went on the  
3 other shift, not a couple of months. She  
4 makes stuff up. She is lying.

5 Q. Okay. And then one and a half --

6 A. For the past one and a half to two years  
7 he keeps to himself. He's trying to have  
8 growth and focus. He found where he does  
9 that with the death of his mom and his  
10 grandma. He is not concerned with a  
11 promotion. And I had asked him about the  
12 Mt. Meigs clique, but he does not know  
13 what she's talking about as far as writing  
14 well. The Mt. Meigs part came in with the  
15 writing well part. And the black P may  
16 not have anything to do with him, and  
17 that's Mr. McCollum that she's talking  
18 about there, doesn't have anything to do  
19 with him.

20 Q. Was there a Mr. McCollum that was an  
21 employee?

22 A. There was at that point in time, uh-huh.

23 Q. Okay.

1 A. The next thing, absolutely not, she is  
2 fishing. He may file a suit against her.

3 Okay. And as far as her transferring and  
4 anything of that nature, she's going back  
5 to the beginning. In order to leave, they  
6 have to file some type of harassment  
7 charge. And as far as him asking her to  
8 go to a hotel, that's -- that was not it.

9 Prior to May 27, the numbers that they had  
10 for her were inoperable. And the question  
11 about sucking his dick, absolutely not.

12 He emphatically denied that. And he asked  
13 me to talk with Mr. Harvest and Mr. Ellis  
14 on the 12 to 8 shift because he told them  
15 that -- or they told him that she would  
16 get -- she told them that she would get  
17 Mr. Hardy.

18 Q. Okay. And that one was 6/28, June the  
19 28th of '05?

20 A. Yes, sir.

21 Q. Okay. I have two more of these that are  
22 pretty short -- at least I think that  
23 there are just two.

1 A. Okay.

2 Q. This is going to be Plaintiff's 7, and  
3 that one has Jonathan Ellis at the top.

4 (The referred-to document was  
5 marked for identification  
6 as Plaintiff's Exhibit No.

7 7.)

8 A. Okay.

9 Q. Is that your interview with Mr. Ellis?

10 A. Yes.

11 Q. And this is one of the persons that  
12 Mr. Hardy referenced as a witness. Did  
13 you ask Mr. Hardy if there was anybody  
14 else you could talk to, or did he  
15 volunteer these people?

16 A. He volunteered them. And I asked him did  
17 he want me to talk with Mr. Dortch, and he  
18 told me no.

19 Q. Okay. Mr. Ellis.

20 A. Okay. Mr. Dortch and Mr. Harvest wrote  
21 the memo; he did not write the memo. He  
22 absolutely did not write the memo and had  
23 no input into the memo, but he did not see

1 how it is possible, the situation was  
2 possible, knowing the individuals. He  
3 didn't see how it was possible.

4 Q. The situation here, Hardy's harassment of  
5 McMillan?

6 A. Yes. He did not know Ms. McMillan had  
7 another job. McMillan said she was going  
8 to leave the dormitory. About a week  
9 before she left the dorm, she said she was  
10 going to leave the work area, period, and  
11 Mr. Ellis had worked with McMillan since  
12 February or March '05, and this was July  
13 1, '05. He said there was no sexual  
14 harassment in the dormitory, no sexual  
15 harassment on campus, but he had heard  
16 about the situation in trustees with the  
17 students and the staff. He was aware  
18 there was a Mt. Meigs clique. He didn't  
19 know who was in it, and he knew that there  
20 were several cliques.

21 Q. Okay. With the memo that he's referencing  
22 here? Is that one of the memos that --  
23 well, we'll come to it later. Plaintiff's

1 8, Arthur Harvest at the top.

2 (The referred-to document was

3 marked for identification

4 as Plaintiff's Exhibit No.

5 8.)

6 A. Mr. Harvest. On the week of the 13th,

7 they had a confrontation about a work

8 procedure she had done wrong, and Harvest

9 changed schedules in April or May and she

10 had been upset ever since.

11 Q. Okay. Who had he had a -- who had a

12 confrontation?

13 A. Mr. Harvest and McMillan.

14 Q. Okay. Did Mr. Harvest work in Paige Hall?

15 A. Yes.

16 Q. Do you recall which week of the 13th he

17 was referring to? Was that July or --

18 A. I'm thinking it was April.

19 Q. Okay. And who changed their schedule in

20 April or May?

21 A. Mr. Hardy.

22 Q. Okay. I'm just trying to be sure I'm

23 clear. Is this Mr. Hardy changed her

1 schedule in April or May or Mr. Harvest's  
2 schedule?

3 A. Harvest's.

4 Q. Okay. And she had what ever since?

5 A. She had been upset ever since.

6 Q. Okay. And is this your writing down here  
7 with Phyllis or --

8 A. No, that's not mine.

9 Q. Okay.

10 A. Let me back up. I'm not sure that it is  
11 Harvest --

12 Q. I'm not either, so...

13 A. I thought it was, but I'm not sure.

14 Q. It was a long time ago. I don't believe  
15 from what I know, if it's helpful at all,  
16 that Ms. McMillan's schedule was changed  
17 around that time. It was changed, I  
18 believe, in January or February and then  
19 she moved.

20 A. Uh-huh. Yeah.

21 Q. This would be Plaintiff's Exhibit 9, a  
22 list of questions.

23 (The referred-to document was

1 marked for identification

2 as Plaintiff's Exhibit No.

3 9.)

4 A. Right.

5 Q. They appear to be questions for Mr. Hardy.

6 Is that something you prepared before you

7 talked to him?

8 A. Right.

9 Q. Did you prepare a list of questions like

10 this before you interviewed all of these

11 individuals or just Mr. Hardy?

12 A. Just Mr. Hardy. Just him.

13 Q. Okay. And then Plaintiff's 10. Can you

14 tell me what that is?

15 (The referred-to document was

16 marked for identification

17 as Plaintiff's Exhibit No.

18 10.)

19 A. That's where I typed Ms. McMillan's

20 interview with me.

21 Q. Okay. So is that something where you

22 would have sat down with those notes we

23 looked at earlier and typed this from your



1 notes?

2 A. Yes.

3 Q. And I notice that has the date of the 15th  
4 on it.

5 A. Right.

6 Q. Is it your memory you did that the next  
7 day?

8 A. Right.

9 Q. Do you have any recollection of about what  
10 time of day it was that Ms. McMillan came  
11 to see you from Ms. Rankins?

12 A. Mid-morning.

13 Q. All right. Do you know what time Ms.  
14 McMillan got off that day or if she had  
15 worked the previous day?

16 A. I don't know.

17 Q. You don't know? Do you know if she worked  
18 at all that day?

19 A. I don't know.

20 Q. Do you recall Ms. Rankins calling her  
21 while she was with you and telling her to  
22 report to work? Do you remember that?

23 A. She said she had Ms. McMillan in her

1 office and said, she's going to come right  
2 up to see you.

3 Q. But you don't recall now that Ms. Rankins  
4 called her while she was in your office,  
5 interviewing?

6 A. Oh, that she called when Ms. McMillan was  
7 in my office?

8 Q. Yeah.

9 A. Oh, no, I don't remember.

10 Q. You don't remember that? Okay.

11 MR. JACOBS: Would you like to  
12 take a short break?

13 THE WITNESS: If you don't mind.

14 MR. JACOBS: I would, so let's  
15 take a short break.

16 (Brief recess.)

17 Q. That's Plaintiff's 11. That's a memo  
18 directed to you from Mr. Hardy. And then  
19 obviously, you received that; that is  
20 correct?

21 (The referred-to document was  
22 marked for identification  
23 as Plaintiff's Exhibit No.

1 11.)

2 A. Yes.

3 Q. Did you respond to Mr. Hardy?

4 A. No.

5 Q. What did you do with it?

6 A. I forwarded it to the legal division.

7 Q. Okay. When you talked with Mr. Hardy, did  
8 you talk with him any about retaliation or

9 retaliatory activities --

10 A. No.

11 Q. -- in regard to Ms. McMillan's claim?

12 A. No.

13 Q. Okay. Show you two more memos that I've  
14 marked Plaintiff's 12 and 13 to this  
15 deposition. Have you seen those before?

16 (The referred-to document was  
17 marked for identification

18 as

19 Plaintiff's Exhibits Nos. 12  
20 and 13.)

21 A. Yes.

22 Q. All right. How did you become aware of  
23 those memos?

1 A. I received these in the mail, and this is  
2 the one that I was referring to in --  
3 Mr. Ellis was referring to in his -- when  
4 he and I were talking in the  
5 investigation.

6 MR. WILSON: Which exhibit are  
7 you referring to? No, the  
8 one you just had in your  
9 hand.

10 THE WITNESS: Both of them. He  
11 said he had nothing to do  
12 with either of them; he just  
13 signed them.

14 MR. WILSON: Those are 11 and 12?

15 THE WITNESS: 12 and 13.

16 Q. These are both dated June 21st. You had  
17 already received them by the time you  
18 talked with Mr. Hardy, these second two?

19 A. Yes.

20 Q. Do you recall when you concluded your  
21 investigation?

22 A. It was about the middle of July.

23 Q. Okay. And there was a memo that you wrote

1 to Mr. Wood with a recommendation?

2 A. Yes.

3 Q. And you concluded in that recommendation  
4 that Mr. Hardy had violated the policy  
5 against sexual harassment; is that  
6 correct?

7 A. Yes.

8 Q. Okay. When you talked with Ms. McMillan  
9 initially on June the 14th or -- assuming  
10 that was the date -- did you talk to her  
11 any about what her legal rights were,  
12 relative to Title 7 and what had happened  
13 -- or what she was alleging had happened  
14 with Mr. Hardy?

15 A. No.

16 Q. I'll show you Plaintiff's 14, which is --  
17 I'll just state for the record that it's  
18 an EEOC charge of discrimination filed by  
19 Ms. McMillan, and it's dated July the 12th  
20 of 2005. Did she speak with you at all  
21 about this charge before she filed it?

22 (The referred-to document was  
23 marked for identification

1 as Plaintiff's Exhibit No.

2 14.)

3 A. No.

4 Q. Have you ever seen this charge before  
5 today?

6 A. Yes.

7 Q. All right. Do you recall when you first  
8 saw it?

9 A. No.

10 Q. Do you recall if you saw it before  
11 Mr. Hardy's hearing with Ms. Calendar?

12 A. No.

13 Q. Is that no, that you didn't see it before  
14 then, or that you don't recall whether you  
15 did or not?

16 A. I don't recall when I saw it.

17 Q. Okay. When a charge of discrimination  
18 such as this, regarding sexual harassment  
19 or sex discrimination, comes to DYS, does  
20 it get forwarded to you?

21 A. Will you repeat that again?

22 Q. Yeah. When a charge of discrimination  
23 such as this one, an EEOC charge, is filed

1 and it is sent to DYS, does that come to  
2 you?

3 A. Not always. Sometimes they go directly to  
4 legal, and sometimes they come to me.

5 Q. Has any procedure been established with  
6 the EEOC office in Birmingham about who  
7 they should send the charge to?

8 A. I don't know.

9 Q. But you do know that some come directly to  
10 you and some go directly to the legal  
11 office?

12 A. Yes.

13 Q. Do you recall if this charge came to you  
14 first or to legal?

15 A. I don't know.

16 Q. You don't remember. All right. Did you  
17 see this charge before you wrote your  
18 recommendation to Mr. Wood?

19 A. I don't remember.

20 Q. You don't remember? Okay. Show you what  
21 I have marked as Plaintiff's 15 to this  
22 deposition, and it is another charge of  
23 discrimination from Ms. McMillan, and it's

1 dated December the 11th of 2005. Have you  
2 seen this charge before today?

3 (The referred-to document was  
4 marked for identification  
5 as Plaintiff's Exhibit No.  
6 15.)

7 A. No.

8 Q. Were you involved at all in any  
9 investigation of the allegations of  
10 retaliation in this charge?

11 A. No.

12 Q. How effective is DYS's policy about  
13 prohibiting sexual harassment?

14 MR. PERRY: Objection to form of  
15 the question.

16 A. Well, I'm not sure I understand the  
17 question, to be perfectly honest.

18 Q. Well, what's the purpose of the policy?

19 A. Well, I'm not sure I understand that  
20 question either.

21 Q. Okay. You have a policy that says  
22 prohibition of sexual harassment. What's  
23 your understanding as personnel manager of



1 the purpose of that policy?

2 A. The same as the purpose of any policy. I  
3 mean...

4 Q. Is it supposed to prevent sexual  
5 harassment?

6 A. Yes.

7 Q. Do you think the policy that you are  
8 charged with here is effective at doing  
9 that?

10 A. I don't know.

11 Q. Have you ever participated in a meeting or  
12 a discussion where the topic of that  
13 discussion was the effectiveness of the  
14 policy in carrying out its stated goal of  
15 prohibiting or preventing sexual  
16 harassment?

17 A. No.

18 Q. Have you ever been in a meeting or  
19 received any report or memorandum in which  
20 the topic or the subject was the  
21 effectiveness of the training that was  
22 being done on sexual harassment?

23 A. Yes.

1 Q. Okay. What have you seen in that regard  
2 or participated in?

3 A. Well, the feedback from staff has been  
4 good.

5 Q. Okay. Just general feedback from  
6 individuals?

7 A. Yes.

8 Q. Okay. What individuals have given you  
9 some feedback about the policy and its  
10 effectiveness?

11 A. The individuals attending the training.

12 Q. Okay. You don't do any of the training --

13 A. I have.

14 Q. You have, okay. When did you participate  
15 in training?

16 A. It's been several years ago, and we've  
17 gotten other people to do it.

18 Q. I had understood earlier that you didn't  
19 have any responsibility for the training  
20 and weren't involved in it, so that's why  
21 I asked.

22 A. Oh, I understand.

23 Q. But several years ago you were involved in

1 the training?

2 A. Uh-huh.

3 Q. And when you say "the feedback," are you  
4 referring to the feedback you got at the  
5 training from the people?

6 A. Yes.

7 Q. Is there some formal evaluation of the  
8 training that's done?

9 A. Yes.

10 Q. Okay. Do you know if that's still done?

11 A. I don't know.

12 Q. Have you participated in any meetings with  
13 anyone in the administration of DYS in  
14 which the opinion was expressed that the  
15 training was not effective?

16 A. Yes.

17 Q. Have you ever participated in such a  
18 meeting with Mr. Wood?

19 A. Yes.

20 Q. I recall -- and I don't want to misstate  
21 it, and I can pull it up if we need to --  
22 but I recall in your memo to Mr. Wood  
23 about Mr. Hardy with your conclusions, you

1 made a reference that you wanted to or had  
2 called Ms. Wheeler to come and do some  
3 additional training?

4 A. Right.

5 Q. Did she in fact come in and do some  
6 training?

7 A. No. We never could work out her schedule  
8 versus our schedule.

9 Q. Do you know where she works now?

10 A. Now she's at transportation.

11 Q. At that time was she in another  
12 department?

13 A. She was with the ABC Board.

14 Q. And is your understanding that those  
15 agencies would loan her out to do training  
16 for other agencies?

17 A. Right.

18 Q. Had you used her in the past to train here  
19 at DYS?

20 A. Yes.

21 Q. Was a substitute found to conduct that  
22 training?

23 A. We have used, obviously, Charlene Smith to

1 do our training, and we've had  
2 conferences, and Charlene Smith has done  
3 sexual harassment training for us at our  
4 conferences.

5 Q. Did Charlene come out and do any training  
6 after the incident with Mr. Hardy?

7 A. No, but we did send numerous staff  
8 downtown to State Personnel and to various  
9 State Personnel training sites around the  
10 state.

11 Q. Okay. So the -- I guess what I'm trying  
12 to follow up on is, you indicated that you  
13 wanted to bring Ms. Wheeler and that  
14 didn't work out, and subsequently no one  
15 came here to do training just for DYS?

16 A. Right.

17 Q. But do I understand that you're telling me  
18 that some of the staff went somewhere else  
19 for training after that point?

20 A. Yes.

21 Q. Okay. Did you have any responsibility for  
22 setting up that training?

23 A. No. It doesn't typically go through me.

1 Q. Okay. Would that have been Mr. Chambers'  
2 group?

3 A. Mr. Chambers or Ms. Neighbors (phonetic)  
4 in our programs section. She handles some  
5 of the Mt. Meigs training schedule.

6 Q. Okay. Let me show you what's been marked  
7 as Plaintiff's Exhibit 16. This is a  
8 memorandum to you from Mr. Hardy. It goes  
9 back a while. Do you recall this memo?

10 (The referred-to document was  
11 marked for identification  
12 as Plaintiff's Exhibit No.  
13 16.)

14 A. Sort of.

15 Q. Do you recall the memo?

16 A. Yes.

17 Q. Okay. What was this memo about? I mean,  
18 the title says "sex discrimination  
19 creating a hostile work environment."

20 A. I think he had his titles confused here.  
21 I think it was supposed to be to  
22 Mr. Samuel, and Ms. Portis and Mr. Samuel  
23 had some type of personal relationship,

1 and Mr. Hardy wanted to get it on the  
2 record that he felt like there was a  
3 hostile work environment there. But I  
4 didn't -- I don't recall if I did anything  
5 about this or not in 2000, to be perfectly  
6 honest.

7 MR. PERRY: Ms. Spann, just  
8 answer his question. He  
9 hasn't asked you that.

10 THE WITNESS: I'm sorry.

11 MR. JACOBS: What was the number  
12 on that?

13 THE WITNESS: 16.

14 MR. WILSON: For the record, do  
15 we have a date?

16 MR. JACOBS: It's January the  
17 18th of 2000.

18 MR. WILSON: Thank you.

19 Q. Let me show you Plaintiff's Exhibit 17,  
20 which doesn't have your name on it. Have  
21 you ever seen that memo before?

22 (The referred-to document was  
23 marked for identification

1 as Plaintiff's Exhibit No.

2 17.)

3 A. Yes.

4 Q. Okay. Could you tell me generally what  
5 that memorandum is supposed to be about or  
6 what it's about?

7 A. It's about a grievance procedure.

8 Q. Do you recall there was a -- there either  
9 was or there was a report of a  
10 relationship between Mr. Samuel and some  
11 staff member?

12 A. Uh-huh. Yes, apparently.

13 Q. Okay. And who was Ms. Portis?

14 A. She was a staff member on campus. I'm not  
15 certain what her class was.

16 Q. All right. When the statement was made,  
17 Ms. Portis has acknowledged a personal  
18 relationship exists between you and he --

19 MR. LOVE: I think he's back to  
20 the first one.

21 MR. JACOBS: Yeah, I'm sorry.

22 Back to 17.

23 Q. Ms. Portis has acknowledged a personal



1 relationship existed between you and she.

2 Is the you in that you, or is it

3 Mr. Samuels?

4 A. It's got to be Mr. Samuels, because it's  
5 not me.

6 Q. Okay. Well, I was curious. You can  
7 understand why I was having trouble  
8 interpreting it, and it wasn't consistent  
9 with anything else that I knew or thought,  
10 so -- okay. Do you recall if any  
11 investigation ensued as a result of this  
12 memorandum?

13 A. Not to my knowledge.

14 Q. About how many sexual harassment  
15 complaints do you get in the course of a  
16 year?

17 A. It varies from year to year.

18 Q. Is there a year that goes by that you  
19 don't have one?

20 MR. PERRY: I'm going to object  
21 to the form of the question  
22 and specifically the scope  
23 of your -- she's the -- as

1 you know, the director for  
2 the entire agency.

3 MR. JACOBS: I know. The policy  
4 is for the whole agency.

5 But I'm not even going to  
6 try to get into specifics.

7 Q. I'm just wondering, since you've been  
8 here, has there been a year that you  
9 didn't have one?

10 A. No.

11 MR. PERRY: My objection is to  
12 the extent that you may use  
13 this to imply that you're  
14 talking about the scope  
15 that's relevant to this  
16 lawsuit.

17 MR. JACOBS: And we don't even  
18 need to argue about this,  
19 but the policy is effective  
20 for the whole agency --

21 MR. PERRY: I understand. I'm  
22 not objecting to questions  
23 about the policy. I'm

1 objecting -- you understand

2 what I'm objecting to.

3 MR. JACOBS: I do. I understand

4 clearly.

5 Q. Would it be typical to have four or five

6 in a year?

7 MR. PERRY: Objection to the

8 form.

9 Q. Is that too much?

10 MR. PERRY: Objection to the

11 form.

12 A. I'm never at a loss for work, let me just

13 put it that way.

14 Q. Okay. Are you familiar with an employee

15 named Erica Judge?

16 A. Yes.

17 Q. Do you know if Ms. Judge made a complaint

18 of sexual harassment at the Autauga

19 facility in the last year, specifically in

20 January of '06?

21 MR. PERRY: I can't help you. If

22 you know, you know; if you

23 don't, you don't. All

1 you're supposed to answer is

2 what you know.

3 Q. Let me rephrase.

4 A. Okay.

5 Q. Have you been involved in investigating a

6 complaint of sexual harassment by Erica

7 Judge?

8 A. No.

9 Q. Okay. Other than being involved in an

10 investigation of a complaint by Ms. Judge,

11 are you aware that she has made a

12 complaint of sexual harassment?

13 A. Yes.

14 Q. Okay. Do you know if she has made one

15 complaint or more than one complaint?

16 A. I don't know.

17 Q. You don't know. Okay. Were you aware of

18 any allegations that Mr. Hardy and Ms.

19 Howard were having sex in the dorm?

20 A. Yes.

21 Q. Did you do any investigation into that?

22 A. Yes.

23 Q. Did you find out anything about it?

1 A. No.

2 Q. You were not able to confirm that?

3 A. Correct.

4 Q. Okay. Were you involved in or aware of a  
5 complaint, an incident involving an Olisa

6 May, who later became Olisa Alexander, and

7 Mr. Hardy?

8 A. No.

9 Q. How about Ms. May or Ms. Alexander and  
10 Mr. Dortch?

11 A. No.

12 Q. Are you aware of any complaints of sexual  
13 harassment or discrimination involving

14 Mr. Dortch?

15 A. Yes.

16 Q. Do you recall who made those complaints?

17 A. I don't remember.

18 Q. Was Ms. Howard one of the individuals?

19 A. I don't remember.

20 Q. Would you have records of those complaints  
21 in your office?

22 MR. PERRY: Objection to the  
23 form.

1 A. I don't know.

2 Q. Just in case I didn't ask it earlier -- I  
3 think I did -- do you keep a record, a  
4 written record, of every complaint of  
5 sexual harassment that comes in?

6 A. Yes.

7 Q. Okay. Are you aware of any allegations of  
8 sexual harassment or discrimination  
9 involving Mary Moten?

10 A. No.

11 Q. Do you recall if Ms. Howard was fired?

12 A. I don't remember.

13 Q. After you completed your investigation and  
14 sent your recommendation to Mr. Wood, did  
15 you have any additional involvement in Ms.  
16 McMillan's complaint of sexual harassment?

17 A. No.

18 Q. Were you called to offer any testimony at  
19 the administrative hearing in November  
20 before Ms. Calendar?

21 A. No.

22 Q. And you weren't called to testify at the  
23 personnel hearing on Mr. Hardy's appeal

1 either, were you?

2 A. No.

3 MR. JACOBS: I think I'm very

4 nearly through if we could

5 take a short break and let

6 me talk with my assistant.

7 (Brief recess.)

8 Q. Ms. Spann, do you have any knowledge as to

9 why either Lisa Alexander or Lisa May left

10 the employ of DYS?

11 A. No.

12 Q. What is the purpose of a Mt. Meigs campus

13 incident report?

14 A. To document that something happened.

15 Q. Okay. Is that the form that a complaint

16 of sexual harassment would be made on?

17 A. I don't know. I -- I don't know.

18 Q. Okay. Is there any particular form that's

19 supposed to be used to make a claim of

20 sexual harassment?

21 A. No.

22 Q. Is there any kind of incident or report

23 that you're aware of that a manager would

1 have ten days to respond to?

2 A. Well, just in our grievance procedures. A  
3 manager would have ten days to respond in  
4 those, but other than that, I couldn't  
5 think of anything.

6 Q. Okay. I just wondered what procedure or  
7 report or whatever would require ten days  
8 for the response, and I think that's it.

9 MR. JACOBS: Okay. I think  
10 that's all I have. I don't  
11 know if Mr. Perry wants to  
12 ask you any questions or  
13 not.

14 MR. WILSON: I have no questions.

15 MR. PERRY: And I don't either.

16 (The deposition of DEBRA SPANN  
17 concluded at  
18 approximately  
19 3:42 p.m. on January 10,  
20 2008.)

21

22

23



DEBRA SPANN - 1/10/2008

85

1 \* \* \* \* \*

2 REPORTER'S CERTIFICATE

3 \* \* \* \* \*

4

5 STATE OF ALABAMA

6 COUNTY OF MONTGOMERY

7

8 I, Nicole Paulk, Certified  
9 Court Reporter and Notary Public in and  
10 for the State of Alabama at Large, do  
11 hereby certify that the foregoing is a  
12 true and accurate transcript of the  
13 proceedings as taken stenographically by  
14 me at the time and place aforementioned.

15

16

Nicole Paulk  
17 Certified Court Reporter  
ACCR #426-Expires 9/30/08

18

19

20

21

22

23

**McMILLAN**

**V**

**DYS AND**

**HARDY**

**DEFENDANT'S**

**EXHIBIT 4**

**State of Alabama**  
**Department of Youth Services**  
**POLICY AND PROCEDURES**

**Related Standards:** 3-JTS-1C-07, 3-JTS-1C-08, 3-JCRF-1C-04, 3-JTS-1C-07-1

**Chapter:** 3 0 Personnel

**Subject:** Prohibition of Sexual Harassment

**Policy Number:** 3 13 2

**I POLICY**

Harassment on the basis of sex is a violation of Sec 703 of Title VII. The Department of Youth Services will take any steps possible to prevent sexual harassment by its employees or on its premises. If such harassment occurs the department will take immediate and appropriate corrective action.

**II DEFINITIONS**

Sexual Harassment is defined. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (C) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

**III PROCEDURES**

Complaint should be made to the Departmental Personnel Manager. S/he will request that the Executive Director designate a non-biased investigator. Written records will be kept of the complaint and investigation. The complainant and accused will be interviewed. If no violation is found both parties are notified and complainant is advised that if dissatisfied with the decision they have additional

Effective Date: DEC. 5, 1996 Issued By: James Dupree Jr. Page 1 of 2



**State of Alabama  
Department of Youth Services  
POLICY AND PROCEDURES**

**Related Standards:** 3-JTS-1C-07, 3-JTS-1C-08, 3-JCRF-1C-04, 3-JTS-1C-07-1

**Chapter:** 3 0 Personnel

**Subject:** Prohibition of Sexual Harassment

**Policy Number:** 3 13 2

internal and external appeal routes. If sexual harassment is suspected or probable cause of violating the sexual harassment policy is found, refer complaints to the Executive Director for a hearing before him or his designee. The two parties may resolve the problem in a written statement of agreement acceptable to both. Appropriate disciplinary or personnel action may be taken.

**IV APPLICABILITY**

This policy applies to all DYS personnel and facilities.

Effective Date: DEC. 5, 1996 Issued By: James Dupree, Jr. Page 2 of 2

**McMILLAN**

**V**

**DYS AND**

**HARDY**

**DEFENDANT'S**

**EXHIBIT 5**

BOB RILEY  
GOVERNOR

State of Alabama

*Department of Youth Services*Post Office Box 66  
Mt. Meigs, Alabama 36057J. WALTER WOOD, JR.  
EXECUTIVE DIRECTOR

August 11, 2006

Hon. Julia Weller  
Administrative Law Judge  
State Personnel Department  
64 North Union Street, Room 300  
Montgomery, AL 36130

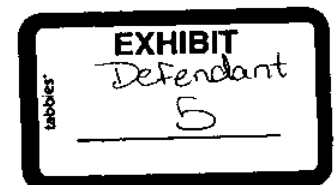
RE: Michael Hardy v. DYS  
Employee's Brief of Evidence

Dear Judge Weller:

In this letter I respectfully request an opportunity to respond briefly to the Employee's voluminous Brief of Evidence. At the conclusion of the hearing I stated that it was not necessary for the Agency to file a brief. I still feel it is unnecessary. However, I do believe the following response to the Employee's Brief of Evidence may be helpful.

The bulk of the Employee's brief consists of red herrings and straw men. As I predicted, the Employee attempted to set up the investigation and the pre-termination hearing process and attack them instead of the evidence. The Employee literally argued that the issues in the case are NOT the grounds for which the Employee was terminated, but the true issues are "much broader and justice demands equity." (Employee's brief, p. 10). The Employee revealed this tactic early in the case and the undersigned addressed them. (See, Alabama Department of Youth Services Motion in Limine and Motion to Excuse Certain Witnesses.) No further response is necessary because the evidence presented at the hearing speaks for itself. That evidence clearly shows that Mr. Hardy conducted himself inappropriately with regard to Ms. McMillian. His termination is therefore warranted on that basis alone. Be certain that the Agency does not argue, and does not have to prove, that the elements of a claim of sexual harassment are met as a result of Hardy's inappropriate conduct with a subordinate employee.

Moreover, on page 11 of his Brief, the Employee makes an absurd argument to which I would like an opportunity to respond. He argues that Ms. Spann "conceded and refuted the issue surrounding the filing of [Mr. Hardy's] grievance. . ." No good faith reading of Ms. Spann's testimony or the other evidence supports the Employee's argument. Two facts brush aside the argument and show that it could not have been made in good faith. First, no "grievance" was filed by the Employee against McMillian. A grievance pursuant to DYS policy 3.3 is initiated



with the supervisor, yet Mr. Hardy filed his so called "grievance" with the personnel director. Second, as Director Walter Wood, Jr. explained, under no circumstances could the Employee file a grievance under DYS policy (a) against a subordinate employee, or (b) on the basis he filed THIS so-called grievance—the sexual harassment complaint McMillian filed against *him*.<sup>1</sup> While it is true that Ms. Spann stated generally an employee has a right to file a grievance, and that general statement is correct, it does not follow logically that a supervisor can therefore file a grievance against a subordinate employee because the subordinate filed a sexual harassment complaint against the supervisor. As the undersigned stated at the hearing, such a policy interpretation would certainly be retaliatory, by definition! It is amazing that the Employee argues, with an apparent straight face, that McMillian's sexual harassment complaint against Hardy was a "break-down in communication in a job-related situation and filing a grievance was an applicable option implemented by policy and properly exercised by Hardy." (Employee's Brief of Evidence, p. 11). The argument should be dismissed and the termination should be upheld on the basis of retaliation.

Moreover, it is telling that in the section of the Employee's Brief of Evidence that discusses retaliation (Employee's Brief, p. 36-38), the Employee fails to even mention any of the evidence supporting retaliation other than the so-called "grievance." In addition to the fact that the Agency did not allow the Employee to turn the table on McMillian and cause her to be investigated, Director Wood testified that he also took action to protect Ms. McMillian, and he testified about the memo writing campaign Mr. Hardy engineered to retaliate against McMillian. The Director thus ordered the termination of this Employee not simply to protect the agency from liability, but because it was the right thing to do under the sorry circumstances this Employee created. His attempts to retaliate against McMillian for filing her sexual harassment complaint, though unsuccessful because thwarted by the Agency, clearly warrant termination.

Yours very truly,



T. Dudley Perry, Jr.  
Deputy Attorney General

TDPJr/pic

---

<sup>1</sup> Apparently the Employee's recollection of Wood's testimony is different from mine. The Employee's Brief of Evidence, p. 11-12, states that Wood testified that the Employee *could* file a grievance against his subordinate employee on the basis of her sexual harassment complaint. You are the trier of fact and I respectfully submit this issue for your consideration.

**McMILLAN  
V  
DYS AND  
HARDY**

**DEFENDANT'S  
EXHIBIT 6**



**BEFORE THE STATE PERSONNEL BOARD  
IN THE MATTER OF**

**MICHAEL HARDY,**

**Employee, appellant,**

V.

**ALABAMA DEPARTMENT OF  
YOUTH SERVICES,**

**Appellee.**

)
)
)
)
)
)
)
)
)

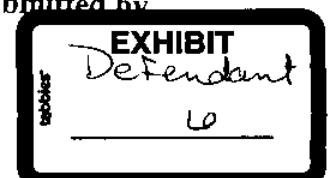
**) Case No.: 06-004-JJW**

## RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The undersigned conducted a hearing on May 8, 2006 and June 10, 2006 at the offices of the Alabama State Personnel Department in Montgomery, Alabama. Theron Stokes, Esq. and Monica Arrington, Esq. appeared as counsel on behalf of Michael Hardy (hereinafter "Hardy" or "the Employee"). T. Dudley Perry, Esq. appeared on behalf of the Department of Youth Services (hereinafter "DYS"). Following the hearing, the parties requested permission to file post-trial briefs. Briefs were filed on or about July 25, 2006. The parties also requested a transcript of the proceedings which was provided to the undersigned around April 10, 2007.

DYS introduced seven exhibits numbered 1-7. The Employee introduced 30 exhibits numbered 1-30.<sup>1</sup>

<sup>1</sup> Employee's Exhibit 14, which are the private personnel records of another employee, were excluded. Furthermore, the exhibits in this cause contain unredacted confidential and privacy protected information. Accordingly, **all exhibits in this case, both those submitted by**



DYS called as witnesses:

- (1) the Employee;
- (2) Tera McMillian, a DYS employee;
- (3) Birdie Montgomery, (by deposition), McMillian's mother;
- (4) Veronica Harris, a Youth Services Aide at DYS; and
- (5) Walter Wood, Director of DYS.

The Employee called as witnesses:

- (1) Eugene Smith, a DYS Employee;
- (2) Rashin Farley a DYS Employee; and
- (3) Rogers Leon Dortch, a DYS Employee.

## **I. PROCEDURAL HISTORY AND CHARGES**

The Department of Youth Services employed Hardy beginning in 1987 as a Youth Services Child Care Worker. He became a Youth Services Counselor I in 1994. He remained in that position until his dismissal, which was effective on January 6, 2006. He received an "Exceeds Standards" performance appraisal rating every year, except for two wherein he received a "Meets Standards" rating.

---

**the Employee and the Department, are placed UNDER SEAL** and may not be viewed by the public for any reason absent the appropriate court order. Also in the Employee's exhibits are the depositions of witnesses Debra Spann, Derrick Bolling, Vanessa Hall, Sylvesta Lee, Reginald Boswell and Elijah Hood, Jr.

Tera McMillian, one of Hardy's subordinates, filed a complaint alleging that Hardy sexually harassed her and later retaliated against her after she filed a complaint. DYS investigated this complaint. In a letter to Hardy, Director Wood advised:

Dear Mr. Hardy:

I have received a recommendation that disciplinary action be taken regarding your employment as a Youth Services Counselor I. The recommendation reveals the following alleged inappropriate conduct and work performance as the reason for the recommendation:

Violation of the Rules of the State Personnel Board 670-X-19-.01(1g)- (disruptive conduct); and/or violation of the Rules of the State Personnel Board 670-X-19-.01(2e) (use of abusive or threatening language) and/or violation of the Rules of the State Personnel Board 670-X-19-.01(2j- serious violation of any other department rule); and/or violation of *DYS Policy* 3.13.2 - Prohibition of Sexual Harassment: Specifically, you were alleged to have made sexual advances and/or to have created a hostile working environment for a subordinate employee, Tera McMillian, who filed a harassment complaint against you. In response to Ms. McMillian's harassment complaint you are alleged to have attempted, among other things, to cause an investigation against her for having filed a complaint against you. ...<sup>2</sup>

DYS held the pre-disciplinary conference on or about November 15, 2005, giving the Employee an opportunity to present any relevant or mitigating circumstances regarding his proposed termination.

---

<sup>2</sup> Employee Exhibit 11.

On December 8, 2005, Marcia Calendar, Executive Assistant to Director

Walter Wood wrote memorandum summarizing the matter:

#### ALLEGATIONS

An administrative Fact Finding Hearing was held on November 15, 2005, at the Central Office at Mt. Meigs for Michael Hardy. You requested the hearing to determine whether disciplinary action is warranted based upon the followed alleged inappropriate work conduct:

Violation of Rules of the State Personnel Board (670-X-19-.01(1g)-disruptive conduct) and or violation of the Rules of the State Personnel Board (670-X-19-.01(2e)-use of abusive or threatening language) and/or violation of the Rules of the State Personnel Board (67-X-19-.01 2j) serious violation of any other department rule), and/or violation of DYS Policy 3.13.2 Prohibition of Sexual Harassment): Specifically, you were alleged to have made sexual advances and/or to have created a hostile working environment for a subordinate Tera McMillian, who filed a harassment complaint against you. In response to Ms. McMillian's harassment complaint you are alleged to have attempted to, among other things, to cause an investigation against her for having filed a complaint against you.

On June 14, 2005, Ms. Tera McMillian made a complaint of sexual harassment against Mr. Hardy. Mr. Hardy supervises Ms. McMillian. You assigned Ms. Spann to investigate the allegation. Ms. Spann concluded, based on corroborating evidence, as a matter of fact that the complaint was valid. Ms. Spann recommended disciplinary action. Attached hereto is a copy of Spann's finding and recommendation.

**In addition, in response to Ms. McMillian's complaint against Mr. Hardy, Mr. Hardy sought to have Ms. McMillian [sic] investigated. Mr. Hardy filed with Ms. Spann a "grievance" against Ms. McMillian [sic] contrary to the grievance procedure. Moreover, the subject of the "grievance" was not an issue covered by the grievance procedure. Attached hereto is a copy of the "grievance" filed by Mr. Hardy against Ms. McMillian. ...<sup>3</sup>**

#### FINDINGS:

The following findings were determined based upon a review of the testimony, documents presented during the hearing, a review the employee's personnel file, and additional efforts to verify the testimony of the witnesses. All allegations against Mr. Hardy are found to be substantiated.

#### RECOMMENDATIONS:

Upon a review of the evidence presented during the hearing and a review of Mr. Hardy's personnel file including past performance evaluations, the following recommendation is made:

Terminate Mr. Hardy's employment as a Youth Services Counselor I for the stated allegations which were found to be substantiated. This employee was the complaining party's supervisor. He was aware of the prohibitions against sexual harassment and was well aware of the anti-retaliation policy.

The employee denies that he sexually harassed Ms. McMillian as Ms. Spann concluded. He argues that Ms. McMillian was working a second job with a Hyundai supplier and that her second job shift began before her DYS shift ended. He argues that she had a motive to fabricate the allegation and thereby acquire more favorable working hours. Ms. Spann investigated his defense and found this not credible, based in part on Ms. McMillian's denial that she had a

---

<sup>3</sup> Bold emphasis supplied.

second job. I now have reason to doubt Ms. McMillian. Specifically, I was recently informed by Ms. Spann that she does have a second job, but stated that it began within the past two months – well after she made her sexual harassment complaint against Mr. Hardy. The existence of a possible motive for fabrication which has come to light since Ms. Spann's investigation thus creates a question whether Ms. Spann's conclusion was correct.

However, that doubt is insufficient to cause me to contradict Ms. Spann or to recommend disciplinary action less than termination. Mr. Hardy clearly attempted to retaliate against Ms. McMillian for filing the complaint against him. Mr. Hardy is, or should be, familiar with the grievance procedure which requires grievances to follow the chain of command, yet he filed this "grievance" with the personnel director. Moreover, the substance of this "grievance" was neither within the scope of the grievance procedure nor within the scope of the anti-discrimination complaint procedure—which requires complaints to be directed to the personnel director. Mr. Hardy is well aware how personally disturbing it is to be investigated by DYS. Witnesses confirmed that Mr. Hardy had discussed this with them prior to Mr. Hardy's retaliatory "grievance" against Ms. McMillian. I find that Mr. Hardy initiated the "grievance" to retaliate against Ms. McMillian. This Agency can no more tolerate retaliation than sexual harassment itself.

Following the pre-dismissal conference, DYS Director, Walter Wood advised Hardy of his termination effective January 6, 2006, in a letter dated the same.<sup>4</sup> The letter explained that Hardy was being terminated for violation of the rules set forth above. Hardy timely appealed his termination to the Alabama State Personnel Board on January 12, 2006. The matter was originally set in March,

---

<sup>4</sup> Employee Ex. 14.

2006, but continued at the request of the parties until May, 2006. The hearing did not conclude in May as scheduled and was reconvened at the request of the parties in June of 2006. Additionally, the parties requested an additional opportunity to submit briefs, transcripts and further evidence, as set forth above. Finally, some question existed as to whether a witness had recorded his testimony over a cell phone during the hearing and sent it to another witnesses. That issue was examined, as well.

## **II. FACTUAL BACKGROUND**

Having reviewed the documentary evidence and having heard the testimony presented at the hearing and having observed the witnesses' demeanor and assessed their credibility, the undersigned finds the weight of the evidence supports the following findings of fact.

### **A. DYS Policy and State Personnel Board Rules**

#### (1) Grievances

Generally, the grievance procedure within DYS is employed when a subordinate employee has a complaint against a supervisor. In this event, the subordinate employee follows the chain of command and files the grievance with the person who supervises the employee he or she claims has been the source of the grievance action. In no event is the grievance filed with the Personnel

Director.

DYS Policy Number 3.13.1 states as follows:<sup>5</sup>

I. POLICY

It is recognized that conflicts will develop between employee and employer. It shall be the policy of DYS to provide its employees an expeditious and systematic procedure for the resolution and alleviation of grievances as the might arise during the course of performing work-related activities. The grievance procedure is a method of settling disputes and break-downs in communication in a job-related situation. Suspensions and dismissals are not covered by this procedure.

...

III. PROCEDURES

Step A: Within five days of the event, **the aggrieved employee<sup>6</sup> should discuss the matter with his immediate supervisor.** If not resolved, the written documentation of the discussion must be maintained.

Step B: In the event that the employee is not satisfied with the decision of the supervisor, he may request the review by the departmental administrator in charge of his respective area. The request must be in writing and within 10 days of the decision of his supervisor. The matter should be heard within 10 days or as soon as practicable. A decision will be rendered in writing.

Step C: If the employee still feels that the decision rendered is not equitable, he may request a review by the Executive Director of DYS. This request must be in writing and filed within 10 days of receipt of the administrator's written decision. The director should reply in

---

<sup>5</sup> Employee Exhibit 3.

<sup>6</sup> Emphasis supplied.



writing within 10 days of receipt of the request or as soon as practicable.

Step D: The department considers the decision of the Executive Director as final. However, the State Personnel Board may elect to consider certain matters upon appeal to that body.

#### Institutions

Step A: The aggrieved employee should within five working days of the event discuss the matter with his immediate supervisor. Written documentation of the discussion must be maintained.

Step B: If in the opinion of the aggrieved employee satisfactory corrective measures have not been implemented, he should request a review of the grievance by the facility superintendent. This request must be in writing, accompanied by supportive documentation and made within ten working days of his supervisor's final decision. The superintendent should respond in writing within ten working days or as soon as practicable after receiving the request.

Step C: If still dissatisfied, the aggrieved employee may request a review of the grievance by the administrator of institutional services. This request must be in writing accompanied by supportive documentation and made within ten working days of the superintendent's written decision. The administrator should respond in writing within ten working days or as soon as practicable after receiving the request.

Step D: If the employee still feels that the decision rendered is not equitable, he may request a review by the Executive Director of DYS. This request must be in writing and filed within ten days of receipt of the administrator's written decision. The Director should reply in writing within ten days of receipt of the request or as soon as practicable.

## **(2) Sexual Harassment**

DYS Policy 3.13.2<sup>7</sup> states in pertinent part as follows:

### **I. POLICY**

Harassment on the basis of sex is a violation of Section 703 of Title VII. The Department of Youth Services will take any steps possible to prevent sexual harassment by its employees on its premises. If such harassment occurs the department will take immediate and appropriate corrective action. ...

### **III. PROCEDURES**

Complaint should be made to the Departmental Personnel Manager. S/he will request that the Executive Director designate a non-biased investigator. Written records will be kept of the complaint and investigation. The complainant and accused will be interviewed. If no violation is found both parties are notified and complainant is advised that if dissatisfied with the decision they have additional internal and external appeal routes. If sexual harassment is suspected or probable cause of violating the sexual harassment policy is found, refer complaints to the Executive Director for a hearing before him or his designee. The two parties may resolve the problem in a written statement of agreement acceptable to both. Appropriate disciplinary or personnel action may be taken.

## **(3) Retaliation and/or Disruptive Conduct**

State Personnel Board Rule 670-X-19-.01 General Work Rule provides:

(1) In addition to any special rules issued by the various appointing

---

<sup>7</sup> Employee Exhibit 2.

authorities for the guidance of their employees, the following standard general work rules shall apply to all classified employees:

(a) Violations that normally result in disciplinary actions of increasing severity: ...

7. Disruptive conduct of any sort.

(b) More serious violations that may result in suspension or discharge on the first offense, considering work record and length of service. ...

5. Use of abusive or threatening language. ...

10. Serious violation of any other department rule.

#### **B. The Basis for the Dismissal**

DYS initially employed Hardy beginning in July, 1987 as a Youth Services Child Care worker.<sup>8</sup> In 1994, DYS promoted Hardy to the position of Youth Services Counselor I.

DYS also employed a woman by the name of Tera McMillian (hereinafter "McMillian") at Mount Meigs for approximately 4 years at the time of this hearing in the ITU (Intensive Treatment Unit). Prior to that time, McMillian worked in two dormitories on the Mount Meigs Campus: Paige Hall and prior to that, Holloway Hall. While working at both Paige and Holloway Hall, Hardy

---

<sup>8</sup> Hardy has been employed with the state for nearly 18 ½ years. After obtaining a BS degree Hardy testified that he took counseling courses from Troy State but did not complete the program. His first job with the state began in 1987 as a Mental Health Worker before coming to DYS as a Youth Services Child Care Worker to supervise students. He has also worked as a Youth Services Counselor.

supervised McMillian either directly or indirectly, however, McMillian encountered very little contact with Hardy while in Holloway Hall. McMillian explained that from October of 2002, Hardy was her Unit Manager and she worked with him occasionally. At some point in time, the entire dormitory staff transferred from Holloway Hall to Paige Hall. Only two employees (Estes and Duchett) remained at Holloway Hall. No one told McMillian that she would be required to transfer to Paige Hall in May of 2003, however, she transferred with the rest of the group. Prior to this point, she had very little direct day-to-day contact with Hardy.

At the hearing, McMillian testified she first remembered being harassed by Hardy while working in Paige Hall. The first incident occurred when she went to speak to Hardy about processing some accreditation paperwork. At that time, according to McMillian, Hardy told her that there were potential perks to her job such as coming in late and leaving early. He also talked to McMillian about scripture, claiming he had the gift of prophecy. However, he confessed that he still had some "yokes." Then McMillian states that he began making sexual remarks, such as that he said he had a fantasy for her to "s\*\*\* his d\*\*\*\*" while the others were in the dining hall. McMillian stated Hardy held a gold necklace in his hand twirling while he talked. McMillian stated she refused Hardy's offer and

left the room by telling Hardy she needed some air. After McMillian allegedly refused Hardy, she reported many other occasions wherein Hardy would say "Mac, I need to talk to you out on the porch." McMillian speculates that Hardy threatened to "write her up" later for an incident in retaliation for her refusal of Hardy's advances. However, no evidence suggests that Hardy actually ever disciplined McMillian.

After the first harassment incident, Hardy asked McMillian if she refused him because she was involved with another man. McMillian described a second incident when Hardy was on duty one night. McMillian stated that she sat at a desk when Hardy reached over to her and said "I want you."

On a third occasion, McMillian stated that she and Hardy were in the same building. She had just returned from lunch after stopping at Subway. She sat down at desk and began eating her sandwich. Hardy came out of his office, walked up to desk and grabbed her breast. Hardy said to McMillian "I just wanted to get a little feel before Smitty gets here because I like big t\*\*\*s." McMillian contends she told him not to do this.

Another time, McMillian testified that Hardy asked her how much her child support payments were and offered to pay them along with upkeep of her car and yard for the prospect of getting a key to her home. McMillian stated that Hardy

would call her at home on her off days for just conversation. McMillian stated that during these phone calls, Hardy would ask her to go to a hotel with him to just have some drinks and talk. One time when Hardy called home phone number, McMillian was in the restroom. McMillian's mother answered the phone and gave it to her. Her mother sat at the kitchen table during this conversation. This is the conversation which included the "is it another man..." question. Her mother asked her who it was and she said it was her boss. Her mother overheard the entire conversation on McMillian's end.<sup>9</sup>

Veronica Harris (hereinafter "Harris") has worked with DYS since December of 2001. Harris presented herself as poised, well spoken and articulate. Although Harris has been childhood friends with McMillian for many years, she appeared very reluctant to have become involved in this matter and her testimony carried a great deal of credibility. Having worked in the dormitories at Mt. Meigs, Harris was very familiar with Hardy. Harris testified that she had one conversation with Hardy and during that conversation he asked her, "What would it take for Mac?" Harris understood Hardy to be talking about money. She did not believe that Hardy was talking about sex at that point, but instead she thought that Hardy was asking McMillian for some sort of favor. Harris only replied "I don't

---

<sup>9</sup> Employee Exhibit 18, Deposition of Birdie Montgomery, pages 22-46.

know.” They talked bit more while standing in front of Harris Hall. Harris testified that this conversation took place a couple of months before December 2004.

One of the most significant events, according to McMillian, occurred a few days after Christmas of 2004, when she returned home after shopping. That day, Hardy called her cell phone. He said that someone was not “respecting” McMillian at work. Harris and McMillian were returning to McMillian’s home to wrap presents. As McMillian talked to Hardy on the phone, McMillian and Harris went inside to “make drinks,” according to McMillian. A few minutes after McMillian hung up the phone, Hardy arrived. McMillian also testified that Hardy claimed that he had to bring her a check from work, however, McMillian stated her salary is generally paid by direct deposit.<sup>10</sup> Nevertheless, McMillian admitted to allowing Hardy to come to her home and offering him an alcoholic drink. Hardy specifically requested a specialty drink, a Long Island iced tea, which McMillian testified she had on hand and provided to Hardy. She stated this was the type of mixed drink which she purchased premixed from the liquor store. The

---

<sup>10</sup> Hardy testified that he went to McMillian’s home to deliver an envelope that included a check because she called the dormitory and asked for someone to bring her a check. The shift ends at 4 o’clock and a staff member asked him to bring the check to her home. He does not normally do this for staff, however, he considered “Mac” a special friend and agreed to deliver the check to her.

testimony demonstrated that a Long Island iced tea was the only alcoholic drink that Hardy enjoyed.

After McMillian gave Hardy the Long Island iced tea, Hardy and McMillian sat together in the living/den area to talk while Harris went to another room to giftwrap presents. McMillian admitted to also having "a couple of drinks" while she was with Hardy. Harris testified that Hardy remained at the house for at least an hour. Harris testified that she went to sleep for a portion of the time.

At some point in the conversation between Hardy and McMillian, McMillian claims that Hardy stated the temperature in the room was hot. Then, McMillian testified Hardy pulled up his shirt and asked McMillian to "lick his chest."<sup>11</sup> Harris happened to observe Hardy raise his shirt while in the other room, but did not hear the conversation. Harris did not state that McMillian asked her to come in the room at that point, nor did McMillian leave the room. However, Harris did stay in the house, but not in the living/den area, until after Hardy left.

Before the incident in December, 2004, McMillian worked 4 p.m. to 12 a.m. and occasionally worked the "second shift" from 2 p.m. to 12:00 a.m. After the December 2004 incident, around January 2005, Hardy changed McMillian's

---

<sup>11</sup> McMillian testified she was aware that Hardy suffered from high blood pressure, however, she did not anticipate this event. She stated that she was not aware of what medications Hardy was taking.



schedule to 12 a.m. to 8 a.m. (third shift). On this shift, McMillian almost never saw Hardy. The reason for this shift change was to supposedly to accommodate staffing requirements. Two males and one female are required to be on each shift. In January of 2005, the third shift had three males, thus the second shift would have to move one of its second shift females to the third shift. McMillian discussed the shift change with Hardy and because only two females were available, Hardy gave McMillian the choice of whether she or the other second shift female would be moved to the third shift. McMillian volunteered to move third shift instead of her colleague, Ingria Williams. McMillian knew that at that time, the third shift would present a conflict for Williams because she teaches school during the day and could not work until 8 a.m. Hardy and McMillian had little or no contact on a daily basis.<sup>12</sup>

McMillian testified that she did not apply for a transfer to a different dormitory in December because she did not want to “challenge” Hardy at that time. She did not seem appeased by the fact that she was given a shift change in

---

<sup>12</sup> McMillian testified that the 4 p.m. to 12 a.m. shift in January included Miles, Williams, Wilson, Farley, Dorthch, Cullam and Moore. There were at least 4 or 5 people on the shift at the time, yet it only takes three. The 12 a.m. to 8 a.m. shift was made up of only three employees—Harvis, Ellis, and Howard. When one person on the night shift left, adjustments had to be made. Three people wanted the night shift. Miles, Wilson and Farley all wanted the night shift because they had discussed it with everyone when Bernice Howard reported that she was leaving.

January where she had almost no contact with Hardy after that point.

McMillian contends that in March or April of 2005, Hardy made a sexually harassing statement to her when she took a book back to him and he said that they could go to a hotel to have some drinks.

McMillian and Hardy's final contact occurred sometime in May.

McMillian asked to meet Hardy for the purpose of discussing a transfer to another shift. She told Hardy that she had another job and needed a shift change. He told her that a shift change could take some time to work out. McMillian contends that Hardy never referred her to anyone else that she could talk to about a transfer to another shift. McMillian admits that she did not really have a second job at that time but stated that she may have told Hardy this as an excuse simply to attempt to be removed from under his supervision to another shift. She stated that she wanted to leave in good standing without angering Hardy.

She contends that later in June, she simply had enough and wanted to be out of Hardy's dorm so she went to talk to an EEOC counselor in June, 2005.<sup>13</sup>

However, McMillian also admitted that she knew that Hardy's son had been ill and that Hardy had been away from DYS for most of May through September of 2005. Nevertheless, at the time McMillian reported the alleged harassment, she

---

<sup>13</sup> Employee Ex. 13.

also told Phyllis Rankins about the alleged harassment and requested to be transferred to another area of the campus. When Rankins asked why McMillian was requesting the transfer, McMillian first said that she simply needed a “change of pace.” Later, McMillian told another employee, Debra Spann (hereinafter “Spann”), her motive for the transfer was to avoid Hardy. McMillian offered little to explain her conflicting reasons as to why she waited so long to report the alleged harassment. When counsel inquired why McMillian waited so long after the alleged sexual advances began or the December incident to report the harassment, McMillian replied that she did not want any backlash. McMillian alleged that Hardy always said that his power base was “on the hill,” (meaning the Mt. Meigs campus) and she believed him. McMillian filed a complaint with the EEOC on or about July 12, 2005 which was not received by DYS legal counsel until July 25, 2005.<sup>14</sup>

---

<sup>14</sup> Department Exhibit 1. The Complaint states as follows:

1. My name is Tera McMillian and I am employed by the Respondent at its Mount Meigs campus. I was first hired by the Respondent in October 2002 and since that time I have always performed my duties and responsibilities in a satisfactory manner. Since May of 2003, I have been subjected to a sexually hostile work environment by my supervisory and my co-workers.

2. Beginning in May of 2003, I have persistently been propositioned for sex and sexual favors by my immediate supervisor Michael J. Hardy. On an almost daily basis, Hardy has requested that I “s\*\*\* his d\*\*\*” He has offered me money and other material objects if I would perform this act of oral sex on him. Furthermore, Hardy has almost on a daily basis talked about his sexual prowess with other female workers at the Respondent’s Mount Meigs campus. For example, Hardy has stated to me that he can not “f\*\*\* all night like he used to” and that he can “only f\*\*\* real hard for 5 or 6 minutes” at this time in his life. Also, Hardy grabbed both my breasts while I

After she reported the matter, DYS immediately reassigned McMillian to ITU where she was no longer under Hardy's supervision. When McMillian was initially hired with DYS, she admitted that she may have had sexual harassment training. She also admitted that she may have had other sexual harassment training while at DYS, although she did not readily recall the training.

Prior to working with DYS, McMillian worked with Call Points as a Senior Teleconferencing Operator. McMillian admitted that she had been terminated from that position. She also admitted that after being terminated, she and other employees instituted a lawsuit against Call Points wherein she alleged, *inter alia*, that she was the victim of race discrimination.<sup>15</sup> That lawsuit later settled out of

---

sat a desk [sic] in the facility. All of this behavior was uninvited and unwelcome and I asked Hardy to stop harassing me, but he did not. Hardy also stated that he loved big "t\*\*\*\*\*" and requested that [sic] be allowed to suckle my breast in the office. Again, I declined his invitation. Hardy also spoke regularly of his abilities with regard to oral sex and asked me to allow him to try such with me. As before I declined his invitation and requested that he leave me alone.

3. During this time of almost constant harassment, I began seeing a doctor for anxiety and depression regarding these issues. My treating position [sic] placed me on medication and referred me to a therapist to help me deal with these issues.

4. In March of 2005, Hardy began asking for me to go to hotels with him for sex and offered to buy me a car, tires and other goods in exchange for my compliance. I did not go along with his request. Hardy's harassment of me continued until I reported him on June 16, 2005. After I reported Hardy, I was made to transfer to another Department within the Mount Meigs facility. Since arriving in the new department, I have been subject to retaliation in the form of personnel not willing to help me learn the new position and I have been threatened with being disciplined for no reason.

<sup>15</sup> Employee's Ex. 30. (a copy of a docket sheet from the Federal court.)

court.

McMillian admitted she did not report most of the events she alleged against Hardy at the time they occurred. Specifically, when Hardy touched her breasts, she did not report it, although she knew she could. Likewise, when Hardy called her at home, she did not report those incidents right away. Although, at the hearing, McMillian contended that Hardy asked her for a sexual relationship daily, beginning around May 2003 until she transferred to the 12 a.m. to 8 a.m. shift (which would have been in January 2005). She waited to contact a lawyer until July 12. To the contrary, on cross examination, McMillian appeared surprised when asked why she told the EEOC that she was *not* harassed on a daily basis from January 2005 until July 2005. McMillian attempted to avoid this question by trying to ask another question.<sup>16</sup>

McMillian testified that her evaluations from Hardy were average or above average. The only other witnesses to the alleged harassment by Hardy were Harris and her mother. Despite any training she may have received at DYS, and the knowledge she may have acquired in any previous litigation experience,

---

<sup>16</sup> Employee's Ex. 28. McMillian stated that she did not prepare this EEOC document but she gave the information to a legal secretary. McMillian testified that she signed the EEOC statement under the penalty of perjury that the information she provided was correct and that she was not providing misleading information. She stated that from January through May, Hardy was not abusing her as he had before.

McMillian testified that she did not decide to file a complaint until after she saw a show on Oprah one day.

On July 14, 2005, Michael Hardy in turn filed a grievance against his former subordinate, Tera McMillian, on the basis that she had made unsubstantiated derogatory statements referencing him.<sup>17</sup> The “grievance”: stated as follows:

Please consider this memo pursuant to DYS policy 3.13.1 i.e. filing of a grievance. Ms. Tera McMillian, a former Paige Hall Staff, has continued to make unsubstantiated [sic] derogatory statement [sic] referencing the writer. Additionally, she has encouraged past and present employees (Some of which have been disciplined by the writer) to interfere with an ongoing investigation and file false claims. Due to the fact that this investigation is ongoing, I am filing this claim with your office for assignment to proper authority.

MJH/dm

cc: J. Walter Wood  
Tim Davis  
G. Wayne Booker  
Janice Coles

Attached to this document were several pages of allegations Hardy made against McMillian. Hardy filed this alleged grievance, not in accordance with the grievance procedure, but rather, with Debra Spann, the Personnel Manager, who had handled portions of McMillian’s harassment complaint and transfer. Spann, did not investigate or handle grievance matters. He also copied persons who were

---

<sup>17</sup> Employee Exhibit 7.

not within the appropriate chain of command according to the grievance procedure. His actions could have been perceived as purely responsive to McMillian, rather than following any policy or procedure of DYS.

X Wood testified that it is not appropriate under any circumstances, much less for a supervisor, to file a grievance against a subordinate in a sexual harassment investigation. Even if the circumstance was grievable, it should have followed the chain of command, not given to Spann. Sexual harassment is not a grievable issue when the grievant is the alleged sexual harasser. There is not a policy or procedure wherein the harasser can turn the tables and have the victim investigated. The grievance, had it been a legitimate offense, would go to a specialist in the unit (such as the unit manager), to the facility administrator and then to the director. Spann is not in the chain of command, she is the Personnel Manager for DYS. When the matter arose, Wood discussed the matter with Tim Davis. Wood then acted upon several pieces of information that came to him. The grievance procedure was being discussed on campus and Wood became concerned that Hardy's actions were retaliatory, even though McMillian was no longer under Hardy's supervision. Wood then contacted the State Personnel Department to ask for assistance in conducting training specifically addressing these issues as to instruct all employees, including McMillian and Hardy, regarding appropriate

behavior and appropriate mechanisms to handle these types of situations. The Personnel Department brought in someone from the Attorney General's Office to assist with instruction.

Director Wood also testified that Debra Spann investigated the sexual harassment complaint made by McMillian.<sup>18</sup> Spann's investigation found as follows:

I have investigated the above complaint. I find the complaint to be valid. Two (2) witnesses heard or were asked sexually inappropriate questions concerning Ms. McMillian by Mr. Hardy. In addition, from the information provided by Ms. McMillian, I definitely feel one or more of the incidents which were described to me occurred.

Mr. Hardy is making much of the fact that he has not seen or been around Ms. McMillian except for a few minutes since February, 2005 - she has been on the 12p.m.-8a.m. shift. Ms. McMillian states these incidents occurred over the past two (2) years. Mr. Hardy also is quite concerned that confidentiality has been breached and his good name and character have been compromised.

Mr. Hardy should be disciplined for his actions. All staff should be retrained on sexual harassment. It is apparent to me thinking has not changed in this department. We cannot condone telling staff to do one thing and doing something else ourselves (it is my understanding Mr. Hardy went over sexual harassment at every staff meeting). I have contacted Maxine Wheeler to do Sexual Harassment Training for our staff as it did not sink in with State Personnel doing it.

---

<sup>18</sup> Employee Exhibit 10.



DLS<sup>19</sup>

Hardy presented the testimony of three witnesses. The first witness was a friend and former co-worker, Eugene Smith (hereinafter "Smith"). Smith has been employed with DYS for ten and a half years. Smith became a Shift Supervisor about six years ago. Smith usually supervises the 4 p.m. to 12 a.m. shift. Smith testified that Hardy was the manager of Paige Hall at the time. Smith has worked with McMillian on the 2 p.m. to 10 p.m. shift, as well at the 8 a.m. to 4 p.m. shift and the 4 p.m. to 12 a.m. shift. If staff has a problem, Smith was usually the first person they could talk to. He talked to all the staff at Holloway Hall or Paige Hall. Smith testified that McMillian never complained that Hardy made any sexual advances toward her. She got mad at him when he told her to fill out the log book, but otherwise she seemed happy. She never said anything about Hardy groping her. The modular area where she and other employees worked is a wide open space and voices carry. Smith also testified that McMillian was trained and told about the DYS Sexual Harassment policy every year. Smith admitted that he and McMillian did not necessarily have a cordial relationship after she sold him a truck but he refused to pay her the price she demanded. Following the sale, their relationship soured and turned "nasty." Smith, who appeared to be colleagues

---

<sup>19</sup> Employee Ex. 10.

and friends with Hardy, described McMillian in such a crude and derogatory manner, that his perceptions lost credibility.<sup>20</sup> Smith has worked with Hardy for many years and had talked with him prior to coming to the hearing.

At the time of the hearing Rashin Farley (hereinafter "Farley") had been employed with DYS for about three years. He was originally assigned to Holloway Hall at Mt. Meigs and then to Paige Hall. Hardy was his supervisor. When Hardy moved, Farley moved with him. He moved only one time. When he was working with him, he was working on the evening shift 4 p.m. to 12 a.m. Farley worked with McMillian at times. Farley never recalled any instance in which Hardy made a request to McMillian of a sexual nature. Likewise, Farley testified that he did not perceive McMillian as being sexually aggressive with him or anyone else that he knew. Finally, Hardy called Rogers Leon Dortch (hereinafter "Dortch"). Dortch has been employed with DYS for 13 years. Prior to his DYS employment, he served in the United States Army for twenty years and retired as a SGT 1<sup>st</sup> Class. Dortch, at the time of the hearing, was a Shift Supervisor. The unit manager has the power to change the off-days of employees.

---

<sup>20</sup> Smith described some sexual contact which allegedly occurred between himself and McMillian. Smith stated that he did not complain about it, nor did he "brag" about it. He also stated that he did not complain or feel harassed. He also did not object when she asked him to take her to an adult "toy store" and purchase specific "lifelike" items which he described in detail. Smith then went on to say how he was a Christian and went to church. Then Smith looked at the undersigned as if these two contradictory actions bolstered his credibility.

Unit managers have the ability to change or call an employee and ask them to cover a shift. When he first came to DYS, he was assigned to Paige Hall and Hardy was his supervisor. Dortch worked with McMillian for a little over two years. He testified that their shifts overlapped. Specifically, he arrived 2 hours before she would and left 2 hours before her. Dortch testified that McMillian had poor work habits. Dortch also testified that McMillian volunteered to change shifts in January. Dortch also confirmed that McMillian would have been well aware of the sexual harassment policy and that staff is well trained every year.

### **C. The Employee's Personnel File**

A review of the Employee's personnel file reflects overall ratings throughout his career in the "Exceeds Standards" category with overall scores averaging around 28. There were two exceptions wherein the Employee received a "Meets Standards" rating.

## **III. ISSUE**

Did DYS produce sufficient evidence to warrant dismissal of the Employee for violations of DYS's grievance procedure, retaliatory or disruptive type conduct, prohibition of DYS sexual harassment policy and/or State Personnel Board Rules regarding the use of abusive or threatening language?

#### IV. DISCUSSION

The purpose of the Administrative Appeal is to determine if the termination of the Employee is warranted and supported by the evidence. *Kucera v. Ballard*, 485 So. 2d 345 (Ala. Civ. App. 1986); *Thompson v. Alabama Dept. of Mental Health*, 477 So. 2d 427 (Ala. Civ. App. 1985); *Roberson v. Personnel Bd. of the State of Alabama*, 390 So. 2d 658 (Ala. Civ. App. 1980). In determining whether employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a "preponderance of the evidence." The law is well settled that a "preponderance of the evidence" standard requires a showing of a *probability* that the Employee is guilty of the acts as charged. Thus, there must be more than a mere possibility or one possibility among others that the facts support the disciplinary action at issue, the evidence must establish that *more probably than not*, the Employee performed, or failed to properly perform, as charged. See *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S. Ct. 1953, 138 L. Ed. 2d 327 (1997), holding that a "significant possibility" falls far short of the APA's preponderance of the evidence standard; See also *Wright v. State of Tex.*, 533 F.2d 185 (5<sup>th</sup> Cir. 1976)<sup>21</sup>

---

<sup>21</sup>*Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir.1981) the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

**Violations of DYS Sexual Harassment Policy**

Based upon the evidence presented, the undersigned was convinced that Hardy had more than a work-related relationship with McMillian and violated the DYS sexual harassment policy. The testimony of Harris also convinced the undersigned that Hardy made comments to McMillian which were inappropriate for the workplace. However, the undersigned was NOT convinced that McMillian was the victim of sexual harassment. While Hardy's conduct as a supervisor was subject to disciplinary action, the undersigned does not believe that Hardy's advances were unwelcome. McMillian's testimony was exaggerated and lacked complete credibility and candor. Clearly, McMillian possessed a host of other personal motivations for her testimony. While McMillian and Hardy had some sort of relationship for some period of time, any relationship between the two involved McMillian's complicity. Nevertheless, that does not excuse Hardy for engaging in what he should have known could have been misconstrued as an inappropriate verbal exchange with a subordinate. Therefore, the undersigned does find that Hardy's verbal conduct supports termination.

Regardless of Hardy's relationship with McMillian, his most egregious offense however, is the manner in which he handled the investigation of

---

McMillian's EEOC and sexual harassment complaint, as hereinafter discussed.

### **Violations of the Grievance Procedure and Disruptive Conduct**

Despite the fact that McMillian's credibility has questionable merit, equally or more serious than the sexual harassment charge is the disruptive conduct, potential retaliation, and Hardy's violation of the grievance procedure. Employees must be allowed the freedom to have civil rights actions investigated, even if questionable, without the fear of retaliation. If McMillian's allegations proved to be meritless, the inquiry ends there.

In the present action, Hardy admitted he provided training on the sexual harassment policy on numerous occasions. He also admitted to instructing his employees on the proper procedure to follow when filing claims. McMillian followed the procedures as she had been trained to do.

Flying in the face of this policy, Hardy also admitted to filing a "grievance" against her for following the very procedure he trained her to follow. As a supervisor, he knew better than to conduct himself in such a harassing fashion. He knew he was not following policy, nor was he following the chain of command as proscribed in DYS Grievance Procedure 3.13.1. Since McMillian had filed a claim with the Personnel Manager, Debra Spann, Hardy in turn filed his "grievance" with Debra Spann. This type of threatening behavior, in and of itself, merited

dismissal and was uncharacteristic of a supervisor with his training, background and experience. Such conduct is clearly disruptive and in violation of the Rules of the State Personnel Board 670-X-19-.01(1g)- (disruptive conduct), the Rules of the State Personnel Board 670-X-19-.01(2e)- (use of abusive or threatening language) and/or violation of the Rules of the State Personnel Board 670-X-19-.01(2j)-(serious violation of any other Department Rule). Further, such conduct could also be potentially perceived as retaliatory. This one violation alone, was sufficient to warrant Hardy's dismissal.

Since the above-referenced rules are sufficient to warrant dismissal in this cause, the issue of whether the conduct actually reaches the level of retaliation is moot and shall not be addressed in this forum.

Accordingly, the undersigned finds the totality of the evidence warrants dismissal in this cause. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHOLD

Done, this the 1<sup>st</sup> day of August, 2007.



JULIA JORDAN WELLER

Administrative Law Judge

State of Alabama Personnel Department

64 North Union Street

Montgomery, Alabama 36130

(334) 242-3451

(334) 353-4481

VIA FACSIMILE AND UNITED STATES MAIL

Dudley Perry, Esq.  
Alabama Department of Youth Services  
P. O. Box 66  
Mt. Meigs, AL 36057  
FAX: 215-3872

Theron Stokes, Esq.  
Monica Arrington, Esq.  
Alabama Education Association  
P. O. Box 4177  
Montgomery, AL 36103-4177  
FAX: 262-8377



**McMILLAN  
V  
DYS AND  
HARDY**

**DEFENDANT'S  
EXHIBIT 7**

**BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA**  
**IN THE APPEAL OF**  
**MICHAEL HARDY**  
**OCTOBER 17, 2007**

OCT 19 2007

This matter came before the Board upon the dismissal of the Employee from his employment with the Department of Youth Services. The Employee was dismissed effective January 6, 2006 based upon charges contained in a letter to the Employee dated the same. This matter was assigned to Administrative Law Judge Julia J. Weller, as Hearing Officer for the State Personnel Board and a hearing was held on this matter on May 8, 2006 and June 10, 2006. The Administrative Law Judge's Report is now before the Board for consideration. The Board has also had the benefit of oral argument.

Essentially the charges against Hardy are a result of a harassment complaint which was filed by one of his subordinate employees. Hardy allegedly made sexual advances and created a hostile working environment for a subordinate employee. The subordinate employee filed a harassment complaint against Hardy. In response, Hardy attempted to cause an investigation against the complaining employee for having filed a complaint against him. The Department alleges that Hardy violated State Personnel Board Rules 670-X-19-.01 (1a)(7)—Disruptive Conduct; (1b)(5)—Use of Abusive or Threatening Language; (1b)(10)—Serious Violation of any Other Department Rule and DYS Policy 3.13.2—Prohibition of Sexual Harassment.

The Administrative Law Judge found that the totality of the evidence warrants dismissal in this cause and recommended that the Employee's dismissal be sustained. The Board hereby adopts by reference the



findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order as if fully set forth herein. The Board finds that the testimony of the alleged victim is not credible and her complaints of sexual harassment are unfounded; however, the Employee's response to these allegations as a supervisor were inappropriate.

The Board has carefully considered the Administrative Law Judge's Report in this case and is of the opinion that the decision of the appointing authority to dismiss the Employee is supported by the evidence and that the termination is warranted.

It is therefore the Order of this Board that the decision of the appointing authority to dismiss the Employee is hereby affirmed.

  
JACKIE GRAHAM  
SECRETARY

  
JOE N. DICKSON  
CHAIRMAN

  
JOHN MCMILLAN  
MEMBER

\_\_\_\_\_  
JOYCE P. O'NEAL  
MEMBER

  
ELLEN G. MCNAIR  
MEMBER

\_\_\_\_\_  
JAMES H. ANDERSON  
MEMBER

**McMILLAN  
V  
DYS AND  
HARDY**

**DEFENDANT'S  
EXHIBIT 8**

**STATE OF ALABAMA DEPARTMENT OF  
PERSONNEL**

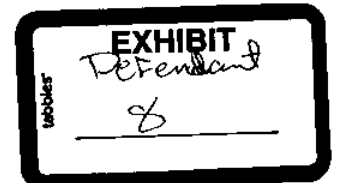
**HEARING OF MICHAEL HARDY**

**May 8, 2006 and June 10, 2006**

**Pages 1 through 691**

**CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:**

**Laura A. Head  
Court Reporter  
Phone: (334) 286-4938  
Cell: (334) 202-4851  
lauraheadreporter@charter.net**



BEFORE THE  
STATE OF ALABAMA  
DEPARTMENT OF PERSONNEL  
MONTGOMERY, ALABAMA

IN THE MATTER OF: MICHAEL HARDY  
TERMINATION APPEAL

\*\*\*\*\*  
TESTIMONY AND PROCEEDINGS, taken before

the Honorable Julia J. Weller, Administrative Law  
Judge, at The Folsom Administration Building, 64  
North Union Street, Montgomery, Alabama, on  
Monday, May 8, 2006, and Monday, July 10, 2006,  
and reported by Laura A. Head, Court Reporter and  
Commissioner for the State of Alabama at Large.

\*\*\*\*\*

APPEARANCES:

ADMINISTRATIVE LAW JUDGE:

Honorable Julia J. Weller  
Administrative Law Judge  
Folsom Administrative Building  
64 North Union Street  
Montgomery, Alabama 36130

FOR THE ALABAMA DEPARTMENT OF YOUTH SERVICES:

Mr. T. Dudley Perry, Jr.  
Deputy Attorney General  
Alabama Department of Youth Services  
P. O. Box 66  
Mt. Meigs, Alabama 36057

FOR EMPLOYEE MICHAEL HARDY:

Mr. Theron Stokes  
Attorney at Law  
P. O. Box 4177  
Montgomery, Alabama 36103

Ms. Monica Arrington  
Attorney at Law  
317 Rosa Parks  
Montgomery, Alabama 36108

\*\*\*\*\*

EXAMINATION INDEX

TERA McMILLIAN

DIRECT BY MR. PERRY . . . . . 65  
CROSS BY MR. STOKES . . . . . 100  
REDIRECT BY MR. PERRY . . . . . 167  
RECROSS BY MR. STOKES . . . . . 192  
FURTHER REDIRECT BY MR. PERRY . . . . . 205  
FURTHER RECROSS BY MR. STOKES . . . . . 208

VERONICA HARRIS

DIRECT BY MR. PERRY . . . . . 214  
CROSS BY MS. ARRINGTON . . . . . 229

REDIRECT BY MR. PERRY . . . . . 262  
RECROSS BY MS. ARRINGTON . . . . . 264

MICHAEL HARDY

DIRECT BY MR. PERRY . . . . . 267

EUGENE SMITH

DIRECT BY MR. STOKES . . . . . 330  
CROSS BY MR. PERRY . . . . . 361  
REDIRECT BY MR. STOKES . . . . . 373

WALTER WOOD

DIRECT BY MR. PERRY . . . . . 386  
CROSS BY MR. STOKES . . . . . 408  
REDIRECT BY MR. PERRY . . . . . 476  
RECROSS BY MR. STOKES . . . . . 482

RASHIN FARLEY

DIRECT BY MR. STOKES . . . . . 492  
CROSS BY MR. PERRY . . . . . 496  
REDIRECT BY MR. STOKES . . . . . 499

ROBERT LEON DORTCH

DIRECT BY MS. ARRINGTON . . . . . 501  
CROSS BY MR. PERRY . . . . . 528  
REDIRECT BY MS. ARRINGTON . . . . . 541  
REDIRECT BY MS. ARRINGTON . . . . . 548  
RECROSS BY MR. PERRY . . . . . 551  
FURTHER REDIRECT BY MS. ARRINGTON . . . . . 554

MICHAEL HARDY (recalled)

DIRECT BY MR. STOKES . . . . . 556  
CROSS BY MR. PERRY . . . . . 626  
REDIRECT BY MR. STOKES . . . . . 653

\*\*\*\*\*

(Whereupon, the following

TESTIMONY AND PROCEEDINGS

were had and done on Monday,

July 10, 2006, commencing at

9:43 a.m. as follows:)

THE COURT: Let's start with the  
motions that y'all have got this morning.

MR. PERRY: Okay. Why don't we --

THE COURT: I know you've got a motion  
in limine.

MR. PERRY: I do, and I have another  
oral motion. Procedurally, first of all, we  
have had a couple of conference calls where  
we have talked about the procedure and the  
issues to be tried. You remember I made a  
couple of arguments.

First, I argued that under the statute,  
that I don't think the employer has the  
burden of proof but the employee does. As I  
understand your ruling, the employer does  
have the burden, and I'm prepared to go  
forward on that basis.

Second, I argued that if the employer

5

1 in this case does have the burden, that the  
2 employer should be allowed to prove that an  
3 investigation was conducted and a hearing was  
4 held on the administrative level at the  
5 department and that the director's decision  
6 was based on the recommendation from the  
7 hearing officer after that thorough  
8 investigatory process. As I understand --  
9 and that therefore his decision was -- what's  
10 the word -- based on -- it was well-founded.  
11 I forget the word that you had used. As I  
12 understand your ruling, I am -- my burden is  
13 not to prove the investigation but to prove  
14 that the underlying bases of the termination  
15 were more likely factually true than not.

16 THE COURT: What you have to show is  
17 there was a legitimate business reason for  
18 the termination.

19 MR. PERRY: But as a factual matter.  
20 And I'm prepared to go forward, and on that  
21 basis, I have not come prepared to try the  
22 case of DYS's procedure on which Mr. Wood  
23 relied which gave --

6

1 THE COURT: Really, whatever the  
2 director determined is kind of irrelevant  
3 because, as you know, this is a de novo  
4 proceeding. I come in and take a completely  
5 new look at it. All I am evaluating is  
6 whether or not the termination was  
7 warranted. And I look at all the same facts  
8 that the director would have looked at and  
9 make my own determination. What he thinks, I  
10 might as well ask what somebody on the street  
11 thinks. It's not preclusive in this case.  
12 It only reinforces what the department's  
13 argument is, but it doesn't bind me in this  
14 proceeding.

15 MR. PERRY: That's my understanding.  
16 Now, I have -- there are two issues that come  
17 up, therefore, in connection with this --  
18 these two rulings that you have made. One  
19 I've raised in a motion in limine, and I'll  
20 get to that. The second is basically an oral  
21 motion in limine now.

22 During the depositions, there were some  
23 questions that went to the validity or

7

1 sufficiency or the competency of the  
2 investigation. And I obviously didn't object  
3 to any questions and allowed the discovery to  
4 go forward. But what I expect today is that  
5 the employee intends to set that up as a  
6 straw man and attack that process, and I'm  
7 not -- I didn't -- I would love to have tried  
8 this case on that basis. But I'm not  
9 prepared to try it, and I think that will get  
10 us off track. So I believe that when the  
11 time comes, I will object. But I believe  
12 that that evidence should be excluded given  
13 the fact that the issue is the underlying  
14 validity of either of the two bases for which  
15 Mr. Hardy was terminated. One, whether he  
16 sexually harassed this subordinate employee  
17 or, two, whether he filed a grievance against  
18 her in retaliation for that or a couple of  
19 other factual issues that he himself did.

20 THE COURT: What is your response to  
21 that? Why is the investigation relevant?

22 MR. STOKES: Why is the investigation  
23 relevant? Because that is part of the

8

1 pattern for termination. And the reason --

2 THE COURT: You have to be more  
3 specific than that.

4 MR. STOKES: Well, what I'm saying,  
5 Your Honor, is that according to the law,  
6 Mr. Hardy had a property to -- a due process  
7 right because he was a merit system employee.

8 THE COURT: Right.

9 MR. STOKES: That that was taken away  
10 from him by --

11 THE COURT: Due process is met in this  
12 hearing. It's a de novo hearing.

13 MR. STOKES: Yes, ma'am, I understand  
14 it's de novo.

15 THE COURT: We're not dealing with any  
16 due process at the agency. That's all cured  
17 by having a new hearing here.

18 MR. STOKES: No, I'm not saying we're  
19 curing all of that. It's a process statement  
20 about the fact-finding matter that's very  
21 relevant to this hearing.

22 THE COURT: The facts are either there  
23 to warrant the termination or they're not.

141

1 Q. You testified -- so what you're saying was  
2 you didn't testify earlier that you decided  
3 that you wasn't going to take it, couldn't  
4 take it, and you went up there to report it  
5 because you were so frustrated? You don't  
6 remember giving any --  
7 A. I was frustrated. I was mentally upset. But  
8 I did not get aggressive with him. I was  
9 very anxiety filled, yes.  
10 Q. Okay. So but that -- what triggered you to  
11 go and actually talk to them didn't have  
12 anything to do with Mr. Hardy, did it?  
13 A. I went there to get a transfer from the dorm.  
14 Q. But that incident didn't have anything to do  
15 with Mr. Hardy.  
16 A. Yes, it did because I thought that since  
17 Mr. Hardy is so powerful there, that not only  
18 him but these people were working with him.  
19 Yes, I did think that.  
20 Q. Okay. So you thought this incident in which  
21 Mr. Harvest was telling you if you did, it  
22 would violate policy of DYS, you thought that  
23 that was also part of this conspiracy against

142

1 you by Mr. Hardy.  
2 A. Yes.  
3 Q. Okay. Now, isn't it also true that when you  
4 went and talked to Ms. Deborah Spann, that  
5 your mother was present?  
6 A. She was there.  
7 Q. And isn't it also true that you were present  
8 when your mother said she heard Michael Hardy  
9 on the telephone, holding the telephone to  
10 her ear and you holding the telephone to your  
11 ear, ask Michael Hardy -- he asked you to  
12 take you to a hotel?  
13 A. That may be an inconsistency because I was on  
14 the phone and she was sitting at the table.  
15 Q. No, I'm not asking you an inconsistency.  
16 A. No.  
17 Q. I'm asking you do you remember her telling --  
18 A. No, I don't.  
19 Q. -- Ms. Deborah Spann that? You don't  
20 remember her telling her that.  
21 A. No.  
22 Q. And if Ms. Deborah Spann said she told her  
23 that, that wouldn't be correct, would it?

143

1 Your mother.  
2 A. The three of us were talking at the same  
3 time, and that could be an inconsistency.  
4 But what --  
5 Q. No, I'm not asking you --  
6 A. -- happened is I have no recollection of it.  
7 Q. No --  
8 A. But if she says that that happened, it's  
9 probable.  
10 Q. If Ms. Spann said that it happened, you would  
11 say that that was correct?  
12 A. I said it was probable because that's not  
13 what happened.  
14 Q. Okay. Now, help me with this now. They  
15 decided to transfer you that day, and you  
16 were going to go to ITU; is that correct?  
17 A. No, I went to Trustees.  
18 Q. You went to Trustees first, but you  
19 understood you were going to be going to  
20 ITU. You said you were going to --  
21 A. No.  
22 Q. You don't remember that --  
23 A. It wasn't understood that I was going to go

144

1 to ITU. She told me to go to Trustees Hall.  
2 Q. And then was not your understanding you were  
3 going to go to Trustees Hall for seven days  
4 and then go to ITU, Ms. McMillian?  
5 A. No.  
6 Q. Did not --  
7 A. I stayed at ITU one day, and then I went to  
8 Trustees. I stayed at Trustees one day, and  
9 then I went to ITU. One night.  
10 Q. Isn't it correct to say that ITU was the only  
11 dorm with a 10:00 to 6:00 shift?  
12 A. No. CAPS has a 10:00 to 6:00, and I think  
13 Holloway Hall does too.  
14 Q. Which one?  
15 A. I think CAPS and Holloway Hall does. I'm not  
16 for sure about that.  
17 Q. It was your desire to have a 10:00 to 6:00  
18 shift, wasn't it?  
19 A. No, it wasn't. It was my desire to have a  
20 6:00 to 2:00.  
21 Q. And when you went to ITU, Ms. McMillian, I  
22 think you stated that you went and talked to  
23 Ms. Spann on June 25th; is that correct? Of